

HOUSE BILL 1238

R2

8lr2826

By: **Delegates Hixson, Elmore, Gilchrist, Howard, Ivey, Kaiser, Olszewski, Rice, Ross, and Stukes**

Introduced and read first time: February 8, 2008

Assigned to: Ways and Means

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 16, 2008

CHAPTER _____

1 AN ACT concerning

2 **Transportation – Public–Private Partnerships – Notice to the General**
3 **Assembly**

4 FOR the purpose of requiring the ~~Maryland Transportation Authority or the State~~
5 Department of Transportation to provide certain information to certain
6 committees of the General Assembly and the Department of Legislative Services
7 by a certain date prior to issuing a public notice of procurement related to a
8 public–private partnership; requiring the ~~Authority or the State Department of~~
9 Transportation to provide certain information to certain committees of the
10 General Assembly and the Department of Legislative Services by a certain date
11 prior to entering into a public–private partnership; defining certain terms;
12 ~~repealing certain redundant provisions of law relating to disclosure of certain~~
13 ~~public–private partnerships involving the Authority;~~ and generally relating to
14 providing notice to the General Assembly of public–private partnerships
15 involving the ~~Maryland Transportation Authority and the State Department of~~
16 Transportation.

17 BY adding to

18 Article – Transportation

19 Section 3.5–101 and 3.5–201 to be under the new title “Title 3.5. Public–Private
20 Partnerships”

21 Annotated Code of Maryland

22 (2001 Replacement Volume and 2007 Supplement)

23 ~~BY repealing and reenacting, with amendments,~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 ~~Article – Transportation~~
 2 ~~Section 4-205(e)~~
 3 ~~Annotated Code of Maryland~~
 4 ~~(2001 Replacement Volume and 2007 Supplement)~~
 5 ~~(As enacted by Chapter 383 of the Acts of the General Assembly of 2007)~~

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

8 **Article – Transportation**

9 **TITLE 3.5. PUBLIC-PRIVATE PARTNERSHIPS.**

10 **SUBTITLE 1. DEFINITIONS.**

11 **3.5-101.**

12 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS
 13 INDICATED.

14 ~~(B) “AUTHORITY” MEANS THE MARYLAND TRANSPORTATION~~
 15 ~~AUTHORITY ESTABLISHED UNDER TITLE 4 OF THIS ARTICLE.~~

16 ~~(C)~~ (B) “PRIVATE ENTITY” INCLUDES ANY NATURAL PERSON,
 17 CORPORATION, GENERAL OR LIMITED PARTNERSHIP, LIMITED LIABILITY
 18 COMPANY, JOINT VENTURE, BUSINESS TRUST, PUBLIC BENEFIT CORPORATION,
 19 NONPROFIT ENTITY, OR OTHER BUSINESS ENTITY.

20 ~~(D) “PUBLIC FUNDS” INCLUDES STATE REVENUE, FEDERAL REVENUE~~
 21 ~~RECEIVED BY THE STATE, TOLL REVENUE, OR ANY DEBT ISSUANCES OF THE~~
 22 ~~STATE, INCLUDING REVENUE BONDS ISSUED BY THE AUTHORITY OR CONDUIT~~
 23 ~~FINANCING.~~

24 ~~(E) “PUBLIC NOTICE OF PROCUREMENT” INCLUDES A REQUEST FOR~~
 25 ~~PROPOSALS, REQUEST FOR INFORMATION, OR REQUEST FOR EXPRESSIONS OF~~
 26 ~~INTEREST ISSUED BY THE AUTHORITY OR THE DEPARTMENT.~~

27 ~~(F) “PUBLIC-PRIVATE PARTNERSHIP” MEANS A PROJECT OR~~
 28 ~~AGREEMENT THAT INVOLVES A PRIVATE ENTITY AND THE AUTHORITY, THE~~
 29 ~~DEPARTMENT, OR THE TRANSPORTATION TRUST FUND AND PROVIDES FOR:~~

30 ~~(1) ACCEPTANCE OF A CONTRIBUTION FROM A PRIVATE ENTITY,~~
 31 ~~INCLUDING MONEY OR REAL PROPERTY, FOR A PROJECT OR SERVICE~~
 32 ~~INVOLVING A TRANSPORTATION FACILITY, TRANSPORTATION FACILITIES~~
 33 ~~PROJECT, OR PARKING FACILITY;~~

1 ~~(2) THE USE OF PUBLIC FUNDS OR REAL PROPERTY BY A PRIVATE~~
2 ~~ENTITY FOR A PROJECT OR SERVICE INVOLVING A TRANSPORTATION FACILITY,~~
3 ~~TRANSPORTATION FACILITIES PROJECT, OR PARKING FACILITY;~~

4 ~~(3) ANY SHARING OF PUBLIC AND PRIVATE RESOURCES FOR A~~
5 ~~PROJECT OR SERVICE INVOLVING A TRANSPORTATION FACILITY,~~
6 ~~TRANSPORTATION FACILITIES PROJECT, OR PARKING FACILITY; OR~~

7 ~~(4) ANY PUBLIC-PRIVATE COOPERATION IN RESEARCHING,~~
8 ~~PLANNING, ACQUIRING, FINANCING, DEVELOPING, DESIGNING, CONSTRUCTING,~~
9 ~~RECONSTRUCTING, REPLACING, IMPROVING, MAINTAINING, MANAGING,~~
10 ~~REPAIRING, LEASING, OR OPERATING A PROJECT OR SERVICE INVOLVING A~~
11 ~~TRANSPORTATION FACILITY, TRANSPORTATION FACILITIES PROJECT, OR~~
12 ~~PARKING FACILITY.~~

13 ~~(C) "TRANSPORTATION FACILITIES PROJECT" HAS THE MEANING~~
14 ~~STATED IN § 4-101 OF THIS ARTICLE.~~

15 (C) "PUBLIC NOTICE OF PROCUREMENT" MEANS A REQUEST FOR BIDS
16 OR REQUEST FOR PROPOSALS ISSUED BY THE DEPARTMENT.

17 (D) "PUBLIC-PRIVATE PARTNERSHIP" MEANS:

18 (1) A SALE OR LONG-TERM LEASE AGREEMENT BETWEEN THE
19 DEPARTMENT AND A PRIVATE ENTITY UNDER WHICH THE PRIVATE ENTITY
20 ASSUMES CONTROL OF THE OPERATION AND MAINTENANCE OF AN EXISTING
21 TRANSPORTATION FACILITY; OR

22 (2) AN AGREEMENT BETWEEN THE DEPARTMENT AND A PRIVATE
23 ENTITY UNDER WHICH THE PRIVATE ENTITY CONSTRUCTS OR RECONSTRUCTS,
24 FINANCES, AND OPERATES A TRANSPORTATION FACILITY AND IS AUTHORIZED
25 TO COLLECT TOLLS OR FEES FOR THE USE OF THE TRANSPORTATION FACILITY.

26 ~~(H)~~ (E) "TRANSPORTATION FACILITY" HAS THE MEANING STATED IN §
27 3-101 OF THIS ARTICLE.

28 SUBTITLE 2. NOTICE TO THE GENERAL ASSEMBLY.

29 3.5-201.

30 (A) NOT LESS THAN 45 DAYS BEFORE ISSUING A PUBLIC NOTICE OF
31 PROCUREMENT RELATED TO A PUBLIC-PRIVATE PARTNERSHIP, THE
32 ~~AUTHORITY OR THE~~ DEPARTMENT SHALL PROVIDE, SUBJECT TO § 2-1246 OF
33 THE STATE GOVERNMENT ARTICLE, A SUMMARY OF THE PROPOSED

1 PROCUREMENT DOCUMENT TO BE USED FOR SOLICITATION OF THE
2 PUBLIC-PRIVATE PARTNERSHIP TO:

3 (1) THE SENATE BUDGET AND TAXATION COMMITTEE, HOUSE
4 COMMITTEE ON WAYS AND MEANS, AND HOUSE APPROPRIATIONS COMMITTEE
5 FOR REVIEW AND COMMENT; AND

6 (2) THE DEPARTMENT OF LEGISLATIVE SERVICES.

7 (B) (1) NOT LESS THAN 45 DAYS BEFORE ENTERING INTO A
8 PUBLIC-PRIVATE PARTNERSHIP, ~~THE AUTHORITY OR THE~~ DEPARTMENT SHALL
9 PROVIDE, SUBJECT TO § 2-1246 OF THE STATE GOVERNMENT ARTICLE, A
10 DESCRIPTION OF THE PROPOSED PUBLIC-PRIVATE PARTNERSHIP AND A
11 FINANCING PLAN, INCLUDING THE INFORMATION REQUIRED UNDER
12 PARAGRAPH (2) OF THIS SUBSECTION, TO:

13 (I) THE SENATE BUDGET AND TAXATION COMMITTEE,
14 HOUSE COMMITTEE ON WAYS AND MEANS, AND HOUSE APPROPRIATIONS
15 COMMITTEE FOR REVIEW AND COMMENT; AND

16 (II) THE DEPARTMENT OF LEGISLATIVE SERVICES.

17 (2) ~~THE AUTHORITY OR THE~~ DEPARTMENT SHALL PROVIDE THE
18 FOLLOWING INFORMATION:

19 ~~(I) THE TERMS OF ANY SALE, CONCESSION AGREEMENT,
20 REVENUE AGREEMENT, OR LEASE OF A STATE OWNED TRANSPORTATION
21 FACILITY, TRANSPORTATION FACILITIES PROJECT, OR PARKING FACILITY TO A
22 PRIVATE ENTITY;~~

23 (I) THE TERMS OF THE PUBLIC-PRIVATE PARTNERSHIP
24 AGREEMENT;

25 (II) THE SCOPE OF ANY AUTHORITY THAT IS GRANTED TO A
26 PRIVATE ENTITY TO CHARGE THE PUBLIC TOLLS OR OTHER FEES;

27 ~~(III) THE ESTIMATED AMOUNT OF ANY ADDITIONAL
28 REVENUE OR COSTS TO THE AUTHORITY, DEPARTMENT, OR TRANSPORTATION
29 TRUST FUND AS A RESULT OF THE PUBLIC-PRIVATE PARTNERSHIP;~~

30 ~~(IV)~~ (III) A COST-BENEFIT ANALYSIS OF THE
31 PUBLIC-PRIVATE PARTNERSHIP;

32 ~~(V) THE ESTIMATED ANNUAL REVENUE FROM THE
33 ISSUANCE OF ANY BONDS USED TO FINANCE THE PUBLIC PRIVATE~~

~~PARTNERSHIP AND THE ESTIMATED IMPACT OF THE ISSUANCE OF THE BONDS ON THE BONDING CAPACITY OF THE AUTHORITY OR THE DEPARTMENT; AND~~

(IV) THE ESTIMATED DOLLAR AMOUNT OF ANY BONDS, INCLUDING PRIVATE ACTIVITY BONDS, TO BE USED TO FINANCE THE PUBLIC-PRIVATE PARTNERSHIP AND THE ESTIMATED IMPACT OF THE ISSUANCE OF THE BONDS ON THE BONDING CAPACITY OF THE DEPARTMENT OR OTHER ISSUING ENTITY; AND

~~(VI)~~ (V) A DESCRIPTION, INCLUDING THE ESTIMATED VALUE, OF ANY LAND, BUILDINGS, OR OTHER STRUCTURES OR ASSETS THAT ARE TO BE TRANSFERRED TO OR EXCHANGED WITH A PRIVATE ENTITY AS PART OF THE PUBLIC-PRIVATE PARTNERSHIP.

~~4-205.~~

~~(e) (1) Subject to the limitations described in [paragraphs (2) and (3)] PARAGRAPH (2) of this subsection, the Authority may make any contracts and agreements necessary or incidental to the exercise of its powers and performance of its duties.~~

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

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

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

~~[(3) (i) 1. In this paragraph the following words have the meanings indicated.~~

~~2. "Public notice of procurement" includes a request for proposals issued by the Authority.~~

~~3. "Public private partnership arrangement" means a lease agreement between the Authority and a private entity under which the private entity assumes control of the operation and maintenance of an existing or future revenue producing highway, bridge, tunnel, or transit facility.~~

1 (ii) ~~Not less than 45 days before issuing a public notice of~~
 2 ~~procurement related to a public-private partnership arrangement, subject to § 2-1246~~
 3 ~~of the State Government Article, the Authority shall provide, to the Senate Budget~~
 4 ~~and Taxation Committee, the House Committee on Ways and Means, and the House~~
 5 ~~Appropriations Committee, for review and comment, and to the Department of~~
 6 ~~Legislative Services, a summary of the proposed procurement document to be used for~~
 7 ~~solicitation of the public-private partnership arrangement.~~

8 (iii) ~~Not less than 45 days before entering into any~~
 9 ~~public-private partnership arrangement, subject to § 2-1246 of the State Government~~
 10 ~~article, the Authority shall provide, to the Senate Budget and Taxation Committee,~~
 11 ~~the House Committee on Ways and Means, and the House Appropriations Committee,~~
 12 ~~for review and comment, and to the Department of Legislative Services, a description~~
 13 ~~of the proposed lease agreement and a financing plan, including:~~

- 14 1. ~~The length of the proposed lease;~~
- 15 2. ~~The scope of any toll setting authority to be granted~~
 16 ~~to the private entity;~~
- 17 3. ~~The scope of payments to the Authority from the~~
 18 ~~proposed public-private partnership arrangement;~~
- 19 4. ~~A cost-benefit analysis of the proposed public-private~~
 20 ~~partnership arrangement, and~~
- 21 5. ~~Requirements pertaining to the ongoing operation and~~
 22 ~~maintenance of the facility and contract oversight.]~~

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 24 July 1, 2008.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.