

BY: Environmental Matters Committee

AMENDMENTS TO HOUSE BILL 576
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “and Washington” and substitute “Washington, Beidle, Glenn, Guzzone, Tarrant, Walker, B. Robinson, Mizeur, and Zucker”; in line 4, after “partnerships;” insert “establishing that the Court of Appeals has jurisdiction over certain immediate appeals related to certain public-private partnerships; establishing certain time limits related to certain appeals;”; in lines 5 and 6, strike “a partnership” and substitute “an”; in line 6, strike “certain functions, services, or assets” and substitute “any public infrastructure asset; providing that an agreement executed under a certain provision of law may include certain provisions; prohibiting certain units of State government from establishing a public-private partnership”; in line 13, after “reports;” insert “requiring certain projects to comply with certain provisions of law; requiring a reporting agency to issue a public notice of solicitation for a public-private partnership under certain circumstances;”; in line 16, after “entities;” insert “authorizing a reporting agency to reimburse a private entity for certain costs and pay a certain entity for the right to use a certain work product; requiring a reporting agency to adopt certain regulations that establish the process for the reimbursement of a private entity; prohibiting a reporting agency from reimbursing a private entity under certain circumstances;”; and in line 17, after “committees;” insert “requiring the Board of Public Works to approve or disapprove each partnership agreement;”.

On page 2, in line 5, after “agreement;” insert “specifying the provisions that a public-private partnership agreement must, may, and may not include; authorizing the Board of Public Works to grant a waiver from a certain time limitation under certain circumstances; providing, under certain circumstances, that the provisions of the Minority Business Enterprise Program apply to public-private partnerships; prohibiting the Board of Public Works from approving a public-private partnership”.

(Over)

agreement until the reporting agency, in consultation with certain entities, establishes certain minority business enterprise goals and procedures; requiring that certain goals and procedures be based on the requirements of certain provisions of law; requiring a circuit court to decide a certain motion within a certain period of time;"; in line 6, after "law;" insert "altering the requirement that the Maryland Transportation Authority provide certain information to certain entities before entering into a certain contract or agreement;"; in the same line, after "repealing" insert "a"; in the same line, strike "provisions" and substitute "provision"; in the same line, strike "a"; in line 7, strike "term" and substitute "terms"; in the same line, after "of" insert "certain provisions of"; after line 8, insert:

"BY adding to

Article - Courts and Judicial Proceedings

Section 12-309

Annotated Code of Maryland

(2006 Replacement Volume and 2011 Supplement)";

in line 21, strike "10A-104" and substitute "10A-105"; in line 24, strike "and" and substitute "through"; in line 25, strike "10A-402" and substitute "10A-404"; after line 28, insert:

"BY repealing and reenacting, with amendments,

Article - Transportation

Section 4-205

Annotated Code of Maryland

(2008 Replacement Volume and 2011 Supplement)";

and in line 31, strike "4-205 and".

On page 3, in line 5, after "management," insert "operational,"; in the same line, after "resources" insert "and expertise"; and strike in their entirety lines 12 through 17, inclusive.

AMENDMENT NO. 2

On page 3, after line 29, insert:

“Article – Courts and Judicial Proceedings

12-309.

(A) THE COURT OF APPEALS HAS JURISDICTION TO HEAR AN IMMEDIATE APPEAL FROM ANY ORDER OF A CIRCUIT COURT, INCLUDING A FINAL JUDGMENT OR AN INTERLOCUTORY ORDER, AFFECTING THE VALIDITY OF A PUBLIC-PRIVATE PARTNERSHIP, AS DEFINED UNDER § 10A-101 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

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

(C) THE COURT OF APPEALS SHALL ISSUE A DECISION ON AN APPEAL UNDER SUBSECTION (A) OF THIS SECTION WITHIN 150 DAYS AFTER THE FILING OF THE APPEAL.

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

AMENDMENT NO. 3

On page 4, after line 6, insert:

(Over)

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

and in lines 7 and 11, strike “(D)” and “(E)”, respectively, and substitute “(E)” and “(F)”, respectively.

On page 5, in line 7, strike “(F)” and substitute “(G)”; in lines 10 and 11, strike “OR THE MARYLAND TRANSPORTATION AUTHORITY”; after line 11, insert:

“(3) THE MARYLAND TRANSPORTATION AUTHORITY;”;

and in lines 12, 13, 14, and 15, strike “(3)”, “(4)”, “(5)”, and “(6)”, respectively, and substitute “(4)”, “(5)”, “(6)”, and “(7)”, respectively.

On page 6, in line 12, strike “(G)” and substitute “(H)”.

AMENDMENT NO. 4

On page 7, in line 1, before “IT” insert “(A)”; in line 2, strike “FOR INFRASTRUCTURE INITIATIVES FOR” and substitute “, IF APPROPRIATE, TO”; in line 3, strike “FURTHERING THE DEVELOPMENT AND MAINTENANCE OF” and substitute “DEVELOP AND STRENGTHEN THE STATE’S PUBLIC”; in line 5, strike “APPORTIONING” and substitute “APPORTION”; in the same line, strike “SECTOR”; in the same line, strike the second “THE”; in line 6, strike “SECTOR” and substitute “SECTORS”; strike beginning with “IN” in line 6 down through “OF” in line 7 and substitute “WITH DEVELOPING AND STRENGTHENING PUBLIC”; in line 8, strike “FOSTERING” and substitute “FOSTER”; in line 9, strike “PROMOTING” and substitute “PROMOTE”; and after line 10, insert:

“(B) IT IS THE PUBLIC POLICY OF THE STATE:

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

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

AMENDMENT NO. 5

On page 7, in line 12, after “(A)” insert “(1) (I)”; in line 13, strike “A PARTNERSHIP” and substitute “AN”; in line 14, strike “FUNCTION, SERVICE, OR” and substitute “PUBLIC INFRASTRUCTURE”; and after line 16, insert:

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

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

On page 9, after line 2, insert:

“10A-105.

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

- (1) § 3-602.1 OF THIS ARTICLE; AND
- (2) THE ENVIRONMENT ARTICLE.”.

On page 10, in line 5, after “INFORMATION” insert “, INCLUDING:

1. CONFIDENTIAL COMMERCIAL INFORMATION;
2. CONFIDENTIAL FINANCIAL INFORMATION; AND
3. TRADE SECRETS”.

AMENDMENT NO. 6

On page 10, in lines 10 and 18, in each instance, strike “MAY” and substitute “SHALL”; in line 18, strike “A” and substitute “IF A REPORTING AGENCY INTENDS TO ESTABLISH A PUBLIC-PRIVATE PARTNERSHIP UNDER § 10A-103 OF THIS TITLE, THE”; in line 19, strike “A” and substitute “THE”; in line 22, strike “THE” and substitute “A”; strike beginning with “INVOLVES” in line 22 down through “PARTNER” in line 23 and substitute “IS COMPRISED OF MULTIPLE SUBENTITIES OR PARTNERS”; in line 24, after “EACH” insert “SUBENTITY OR”; in the same line, strike “OR OFFICER”; in line 26, after “THE” insert “OWNERSHIP”; and in line 27, after “PARTNERSHIP” insert “, AS DESCRIBED IN SUBSECTION (C) OF THIS SECTION,”.

On page 11, in line 2, after “(E)” insert “(1)”; in the same line, strike the colon; in line 3, strike “(1)”; in line 4, after “A” insert “RESPONSE TO A PUBLIC NOTICE OF A”; in the same line, strike “; AND” and substitute a period; after line 4, insert:

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

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

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

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

in line 5, strike “(2)” and substitute “(4) A REPORTING AGENCY MAY”; and after line 6, insert:

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

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

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

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

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

AMENDMENT NO. 7

On page 11, after line 7, insert:

“(A) THE BOARD OF PUBLIC WORKS SHALL APPROVE OR DISAPPROVE EACH PUBLIC-PRIVATE PARTNERSHIP AGREEMENT.”;

in line 8, strike “(A)” and substitute “(B)”; and strike beginning with “, IN” in line 13 down through “ARTICLE” in line 14 and substitute “AS REQUIRED BY § 10A-202(F) OF THIS SUBTITLE”.

On page 12, in line 10, strike “(B)” and substitute “(C)”; in line 11, after “INFORMATION” insert “, INCLUDING:

1. CONFIDENTIAL COMMERCIAL INFORMATION;
2. CONFIDENTIAL FINANCIAL INFORMATION; AND
3. TRADE SECRETS”;

and in line 15, strike “MAY” and substitute “SHALL”.

AMENDMENT NO. 8

On page 13, in line 16, after “BIDDING” insert “SOLICITATION”; in the same line, strike “AND”; after line 16, insert:

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

in line 17, strike “(2)” and substitute “(3)”; in line 27, after “(1)” insert “THE METHOD FOR APPROVAL OF ANY REASSIGNMENT OF ANY LEASE, SUBLEASE, OR SALE, INCLUDING WHETHER”; strike beginning with “AND” in line 27 down through “SALE,” in line 28; and in line 28, after “AND” insert “THAT”.

On page 14, in line 10, after “SERVICES” insert “, AS APPLICABLE,”; strike in their entirety lines 12 and 13; in lines 14, 16, 18, 22, and 25, strike “(9)”, “(10)”, “(11)”, “(12)”, and “(13)”, respectively, and substitute “(8)”, “(9)”, “(10)”, “(11)”, and “(12)”, respectively; in line 18, strike “STATEMENTS” and substitute “RECORDS”; strike beginning with “, AS” in line 19 down through “ENTITY,” in line 20; in line 21, after “BY” insert “THE STATE, INCLUDING”; in the same line, strike “NO MORE THAN EVERY 3 YEARS”; in line 24, strike “AND”; in line 25, after “PROVIDE” insert “, IF APPLICABLE,”; and in line 26, after “BOND” insert “OR A LETTER OF CREDIT; AND”.

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

On page 15, in lines 16 and 20, in each instance, strike “GRANT AN EXEMPTION TO” and substitute “WAIVE”; in lines 17 and 21, in each instance, strike

“(B)” and substitute “(A)”; in line 25, after “(H)” insert “(1)”; in the same line, strike “THIS DIVISION II” and substitute “EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THIS DIVISION”; after line 26, insert:

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

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

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

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

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

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

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

AMENDMENT NO. 9

On page 15, after line 23, insert:

“10A-403.

IN AN ACTION RELATED TO A PUBLIC-PRIVATE PARTNERSHIP, THE CIRCUIT COURT SHALL DECIDE A MOTION TO DISMISS OR MOTION FOR

SUMMARY JUDGMENT AFFECTING THE VALIDITY OF THE PUBLIC-PRIVATE PARTNERSHIP WITHIN 120 DAYS AFTER THE FILING OF THE MOTION.”;

and in line 28, strike the bracket.

On page 16, in line 6, strike “45” and substitute “30”; and in line 36, strike the bracket.

AMENDMENT NO. 10

On page 18, after line 18, insert:

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

Article – State Finance and Procurement

10A-404.

(A) THE FINDINGS AND EVIDENCE RELIED ON BY THE GENERAL ASSEMBLY FOR THE CONTINUATION OF THE MINORITY BUSINESS ENTERPRISE PROGRAM UNDER TITLE 14, SUBTITLE 3 OF THIS ARTICLE, AS ENACTED BY CHAPTER 253 OF THE ACTS OF 2011 AND CHAPTER _____ (H.B. 1370 OF THE ACTS OF 2012), ARE HEREBY INCORPORATED.

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

(Over)

(C) (1) THE BOARD OF PUBLIC WORKS MAY NOT APPROVE A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT UNDER § 10A-203 OF THIS TITLE UNTIL THE REPORTING AGENCY, IN CONSULTATION WITH THE GOVERNOR’S OFFICE OF MINORITY AFFAIRS, THE OFFICE OF THE ATTORNEY GENERAL, AND THE PRIVATE ENTITY, ESTABLISHES REASONABLE AND APPROPRIATE MINORITY BUSINESS ENTERPRISE PARTICIPATION GOALS AND PROCEDURES FOR THE PROJECT.

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

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

(II) REGULATIONS ADOPTED SPECIFICALLY TO IMPLEMENT THIS SECTION.”;

before line 19, insert:

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

SECTION 5. AND BE IT FURTHER ENACTED, That on or before July 31, 2012, a party may appeal an order of a circuit court issued before the effective date of this Act to the Court of Appeals under Section 1 of this Act.”;

in line 19, strike “2.” and substitute “6.”; in the same line, after “That” insert “, except as provided in Section 4 of this Act.”; after line 20, insert:

“SECTION 7. AND BE IT FURTHER ENACTED, That Section 3 of this Act shall take effect July 1, 2012. It shall remain effective for a period of 4 years and, at the end of June 30, 2016, with no further action required by the General Assembly, Section 3 of this Act shall be abrogated and of no further force and effect.”;

and in line 21, strike “3.” and substitute “8.”.