To: The Commission

Date: February 25, 2020

From: Carol S. Rubin, Special Project Manager  
I-495 & I-270 Managed Lanes Study  
Debra Borden, Deputy General Counsel 
Office of the General Counsel

Subject: HB 1249: I-495 and I-270 P3 Agreement Requirements  
(MDOT Promises Act of 2020), and  
HB 1424: P3 Process and Oversight  
Follow-up Discussion of Proposed Amendments

At the Commission meeting on February 20, 2020, General Counsel Gardner presented two bills pending in Annapolis that have direct bearing on the I-495 & I-270 Managed Lanes Study in Annapolis:

- HB 1249, known as the MDOT Promises Act of 2020 includes specific commitments by the Maryland Department of Transportation i) with regard to entry into Community Benefits Agreements for impacted communities, ii) to include certain terms in the P3 Agreement, and iii) by establishing certain obligations that MDOT must perform as conditions of the project.
- HB 1424 includes revisions to the current P3 Act to provide additional transparency and oversight of projects proposed for delivery through public-private partnerships.

You agreed to conditionally support both bills with amendments provided you were briefed on the specifics of the proposed amendments. Both bills are scheduled for hearings before the House Environment and Transportation Committee on March 5th. We have not crafted specific language because we would first need to approach the sponsors with the concepts for revisions we are seeking. Therefore, we are providing you with the specific points with which we will begin our discussions:

Proposed Amendments to the Promises Act.

Within our purview due to our authority and responsibility as stewards of parkland and planning advisors to our respective County Governments.

1. Specifically require mandatory referral review in the P3 Agreement at no less than 30% of engineering and design before construction can commence on any phase of the project.
2. The P3 Agreement must require the mitigation plan for parkland impacts include a provision that avoidance of impact to parkland is subject to a standard above a simple test whether it "reasonably meets the Purpose and Need" as determined by MDOT and FHWA during the NEPA review, and that any mitigation for parkland shall be of "equal or greater natural, cultural or recreational value."
3. The American Legion Bridge (ALB) must be designed and built to structurally accommodate rail.
4. In addition to requiring the State to engage with Virginia to conduct a study of the ALB corridor, the State must engage with Virginia conduct a study of the Woodrow Wilson Bridge (WWB) corridor to determine how to tie-in rail from Montgomery County to the ALB and from Prince George’s County to the WWB.

5. Using state funds for acquisition prior to Board of Public Works approval of the P3 Agreement does not prohibit option payments for reservation of purchase so that an appropriate Mitigation Plan for parkland can be included in the Record of Decision.

6. We may want to eliminate the provisions for data sharing because it is covered by the MPIA. But if it is to remain, the data categories must be broadly expanded, and we want to assure the timing is appropriate for the M-NCPPC analyses to be conducted and included in the Administrative Record.

7. Assure that confidential assertions are not a loophole to avoid disclosure through Non-Disclosure Agreements with the County and the Commission.

Provide support for those amendments that are outside our purview but would improve the legislation as proposed.

1. Clarify that 10% of the toll revenues dedicated to the Special Transportation Fund for local transportation projects are based on gross receipts.

Potential Amendments to the Process and Oversight Legislation that are outside our purview, but they would improve the legislation as proposed.

1. Question whether 1 year for legislature review is going to give MDOT the argument/rationale for how this legislation will cause an unreasonable delay.

2. Credit rating review for any local gov’t may be too broad. It may be best to limit review to the impacted or adjacent local governments.

Subject to your approval, we will move forward with the sponsors to discuss revisions to the two bills.

Attachment A: HB 1249
Attachment B: HB 1424
HOUSE BILL 1249


Introduced and read first time: February 7, 2020
Assigned to: Environment and Transportation and Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 I–495 and I–270 Public–Private Partnership – Partnership Agreement –
3 Requirements
4 (Maryland State Department of Transportation Promises Act of 2020)

5 FOR the purpose of requiring the public–private partnership agreement for the I–495 and
6 I–270 Public–Private Partnership Program to include certain provisions; authorizing
7 certain revenues derived from certain tolls to be distributed to a certain special fund
8 to be budgeted in a certain manner; establishing a certain special fund; requiring the
9 Board of Public Works, on or before a certain date, to request a certain determination
10 letter from the Maryland Transportation Authority and the State Department of
11 Transportation; making certain provisions of this Act subject to a certain
12 contingency; defining certain terms; and generally relating to the I–495 and I–270
13 Public–Private Partnership Program.

14 BY adding to
15 Article – State Finance and Procurement
16 Section 10A–404
17 Annotated Code of Maryland
18 (2015 Replacement Volume and 2019 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article – Transportation
21 Section 4–313(a)(1)
22 Annotated Code of Maryland
23 (2015 Replacement Volume and 2019 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
BY adding to
Article – Transportation
Section 4-408
Annotated Code of Maryland
(2015 Replacement Volume and 2019 Supplement)

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

Article – State Finance and Procurement

10A–404.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
INDICATED.

(2) "COMMUNITY BENEFIT AGREEMENT" MEANS AN AGREEMENT
APPLICABLE TO THE DEVELOPMENT OF ANY TRANSPORTATION PROJECT THAT:

(i) PROMOTES INCREASED OPPORTUNITIES FOR LOCAL
BUSINESSES AND SMALL, MINORITY, WOMEN-OWNED, AND VETERAN-OWNED
BUSINESSES IN THE TRANSPORTATION INDUSTRY;

(ii) ENSURES THE TIMELY, SAFE, AND EFFICIENT COMPLETION
OF THE PROJECT BY FACILITATING A STEADY SUPPLY OF HIGHLY SKILLED CRAFT
WORKERS WHO ARE PAID NOT LESS THAN THE PREVAILING WAGE RATE
DETERMINED BY THE COMMISSIONER OF LABOR AND INDUSTRY UNDER TITLE 17,
SUBTITLE 2 OF THIS ARTICLE;

(iii) PROMOTES SAFE COMPLETION OF THE PROJECT BY
ENSURING THAT AT LEAST 80% OF THE CRAFT WORKERS ON THE PROJECT HAVE
COMPLETED AN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION 10-HOUR
OR 30-HOUR COURSE;

(iv) PROMOTES CAREER TRAINING OPPORTUNITIES IN THE
TRANSPORTATION INDUSTRY FOR LOCAL RESIDENTS, VETERANS, WOMEN, AND
MINORITIES;

(v) PRODUCES FOR BEST EFFORTS AND EFFECTIVE OUTREACH
TO OBTAIN, AS A GOAL, THE USE OF A WORKFORCE THAT INCLUDES MINORITIES TO
THE EXTENT PRACTICABLE; AND

(vi) REFLECTS A 21ST-CENTURY LABOR-MANAGEMENT
(3) "Department" means the State Department of Transportation and includes the Office of the Secretary and the modal administrations.

(4) "Program" means the I-495 and I-270 Public-Private Partnership Program.

(b) The public-private partnership agreement for the Program shall:

(1) (i) Require that at least 10% of the toll revenue from toll lanes on I-495 and I-270 be transferred to the special fund established under § 4-408 of the Transportation Article; and

(ii) Require the special fund to be budgeted in accordance with memorandums of understanding between the Department and the governing bodies of the counties where the toll facilities that are part of the Program are located;

(2) Prohibit the Department from issuing a final request for proposal for the project unless the request for proposal:

(i) Guarantees that any local, State, or regional transit system may use the toll lanes on I-495 and I-270 for buses and other mass transit vehicles without charge; and

(ii) Requires that the American Legion Bridge have a separate pedestrian and bicycle lane or lanes;

(3) Prohibit the Department from using State funds to acquire land for the Program before the Board of Public Works approves the public-private partnership agreement;

(4) Subject to subsection (c)(1) of this section, prohibit the Department from awarding a contract to a bidder unless the bidder agrees to initiate a community benefit agreement that demonstrates positive net economic, environmental, and health benefits to the State;

(5) Subject to subsection (c)(2) of this section, require the Department to share origin and destination data and traffic and revenue model data, consistent with any licenses or other legal
AGREEMENTS RELATED TO THE DATA, WITH:

(I) COUNTY DEPARTMENTS OF TRANSPORTATION; AND

(II) THE MARYLAND–NATIONAL CAPITAL PARK AND PLANNING COMMISSION;

(6) (I) REQUIRE THAT ALL INITIAL TRANSPORTATION TRUST FUND EXPENDITURES AND MARYLAND TRANSPORTATION AUTHORITY LOANS BE REPAYED BY VENDORS OR TOLLS; AND

(II) PROHIBIT THE EXPENDITURE OF ADDITIONAL STATE FUNDS FOR THE PROGRAM BEYOND WHAT IS ALLOCATED IN THE CONSOLIDATED TRANSPORTATION PROGRAM AS OF OCTOBER 1, 2020;

(7) PROHIBIT THE DEPARTMENT FROM SUBMITTING A CONTRACT TO THE BOARD OF PUBLIC WORKS FOR REVIEW UNTIL A FINAL ENVIRONMENTAL IMPACT STATEMENT THAT COMPLIES WITH THE NATIONAL ENVIRONMENTAL POLICY ACT IS AVAILABLE;

(8) REQUIRE ANY TOLL ADJUSTMENTS TO BE SUBJECT TO PUBLIC HEARINGS IN THE COUNTY WHERE THE TOLL FACILITY IS LOCATED;

(9) REQUIRE THE STATE TO UNDERTAKE EFFORTS TO ENGAGE WITH VIRGINIA TO CONDUCT A TRANSIT STUDY OF THE AMERICAN LEGION BRIDGE CORRIDOR; AND

(10) REQUIRE THAT THE MARYLAND TRANSPORTATION AUTHORITY AND THE DEPARTMENT COMPLETE A MONORAIL FEASIBILITY STUDY.

(C) (1) THE PUBLIC–PRIVATE PARTNERSHIP AGREEMENT MAY REQUIRE A BIDDER TO AGREE TO INITIATE A COMMUNITY BENEFIT AGREEMENT THAT DEMONSTRATES BENEFITS IN ADDITION TO THE BENEFITS REQUIRED UNDER SUBSECTION (B)(4) OF THIS SECTION.

(2) THE DEPARTMENT MAY ASSERT CONFIDENTIALITY AS NECESSARY IN ACCORDANCE WITH § 4–335 OF THE GENERAL PROVISIONS ARTICLE WITH REGARD TO THE REQUIREMENT TO SHARE ORIGIN AND DESTINATION DATA AND TRAFFIC AND REVENUE MODEL DATA UNDER SUBSECTION (B)(5) OF THIS SECTION.

Article – Transportation
4–313.

(a) (1) All rentals, rates, fees, tolls, and other charges and revenues derived from any transportation facilities project shall be set aside in a fund known as the “Transportation Authority Fund”, except to the extent that they are [pledged]:

(I) REQUIRED UNDER THE I–495 AND I–270 PUBLIC–PRIVATE PARTNERSHIP AGREEMENT TO BE DISTRIBUTED TO THE SPECIAL FUND ESTABLISHED UNDER § 4–408 OF THIS TITLE; OR

(II) PLEDGED under an applicable trust agreement to secure either:

[(i)] 1. Revenue bonds issued under this subtitle if the trust agreement or bond authorizing resolution expressly provides that this section does not apply to those bonds; or

[(ii)] 2. Revenue bonds of prior issues.

4–408.


SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) On or before October 1, 2021, the Board of Public Works shall request a determination letter from the Maryland Transportation Authority and the State Department of Transportation confirming that the reporting agencies plan to issue a final request for proposals.

(b) Within 5 days after receiving the determination letter requested under subsection (a) of this section from the reporting agencies, the Board of Public Works shall forward a copy of the letter to the Department of Legislative Services, 90 State Circle, Annapolis, Maryland, 21401.

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) Section 1 of this Act shall take effect contingent on the receipt by the Board of Public Works of a determination letter confirming that the reporting agencies plan to issue a final request for proposals.
(b) If a determination letter requested under Section 2 of this Act is received on or before October 1, 2021, Section 1 of this Act shall take effect on the date notice of the letter is received by the Department of Legislative Services in accordance with Section 2 of this Act.

(c) If the Board of Public Works does not receive a determination letter requested under Section 2 of this Act on or before October 1, 2021, Section 1 of this Act, with no further action required by the General Assembly, shall be null and void.

SECTION 4. AND BE IT FURTHER ENACTED, That, subject to Section 3 of this Act, this Act shall take effect October 1, 2020.
HOUSE BILL 1424

P2, P1

By: Delegates Solomon, Barron, Carr, Dumais, Feldmark, Korman, Love, and Stein

Introduced and read first time: February 7, 2020
Assigned to: Environment and Transportation and Appropriations

A BILL ENTITLED

AN ACT concerning

Public-Private Partnerships – Process and Oversight

FOR the purpose of establishing the Public-Private Partnership Oversight Review Board; providing for the composition, chair, and staffing of the Review Board; requiring the Review Board to study and make recommendations regarding certain matters; requiring a reporting agency to submit certain presolicitation reports to the Review Board; requiring a certain reporting agency to include in presolicitation reports for certain public-private partnerships presolicitation reports of certain contracts and a certain environmental impact statement under certain circumstances; requiring the Review Board, within a certain number of days after receiving a presolicitation report, to report and make certain recommendations to the Board of Public Works and certain budget committees; requiring that before the Board of Public Works may make a certain designation certain budget committees have a certain number of days to review and comment on a certain report; requiring that after the Board of Public Works makes a certain designation certain budget committees have a certain period of review and comment before a reporting agency issues a certain notice; requiring certain proposed public-private partnership agreements to be submitted to the Legislative Policy Committee; prohibiting the Board of Public Works from approving a proposed agreement until the Legislative Policy Committee has reviewed and commented on the public-private partnership if a certain review and comment period is during a certain time and until a certain independent rating assessment survey is completed under certain circumstances; requiring a certain independent rating assessment survey to include certain information; requiring the proposed agreement to include certain financial information; requiring that a certain public-private partnership agreement include the minimum credit rating to be maintained by a certain entity and funding source; requiring, under certain circumstances, the terms of a public-private partnership to contain certain provisions; extending a certain prohibition on noncompete clauses in certain public-private partnership agreements to all transit or road maintenance projects

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
regardless of funding source; altering a certain definition; defining a certain term; making conforming changes; and generally relating to public-private partnerships.

BY repealing and reenacting, without amendments,
   Article – State Finance and Procurement
   Section 10A–101(a)
   Annotated Code of Maryland
   (2015 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,
   Article – State Finance and Procurement
   Section 10A–101(b), 10A–201(a) and (c), 10A–203(a), and 10A–401(a) and (c)
   Annotated Code of Maryland
   (2015 Replacement Volume and 2019 Supplement)

BY adding to
   Article – State Finance and Procurement
   Section 10A–101(i), 10A–106, and 10A–203(c)
   Annotated Code of Maryland
   (2015 Replacement Volume and 2019 Supplement)

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

Article – State Finance and Procurement


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

(b) "Budget committees" means the Senate Budget and Taxation Committee, the House [Committee on Ways and Means] ENVIRONMENT AND TRANSPORTATION COMMITTEE, and the House Appropriations Committee.

(i) "TRANSPORTATION FACILITIES PROJECT" HAS THE MEANING STATED IN § 4–101 OF THE TRANSPORTATION ARTICLE.

10A–106.

(A) THERE IS A PUBLIC–PRIVATE PARTNERSHIP OVERSIGHT REVIEW BOARD.

(B) THE BOARD CONSISTS OF THE FOLLOWING MEMBERS:

(1) TWO MEMBERS OF THE SENATE OF MARYLAND, APPOINTED BY THE PRESIDENT OF THE SENATE;
(2) Two members of the House of Delegates, appointed by
the Speaker of the House;

(3) The Comptroller, or the Comptroller's designee;

(4) The State Treasurer, or the State Treasurer's designee;

and

(5) Three members, appointed by the Governor, who shall
have experience in the fields of transportation law, public policy,
finance, or management consulting.

(c) The President of the Senate and the Speaker of the House
shall jointly designate the chair of the Board.

(d) The Comptroller shall provide staff for the Board.

(e) The Board shall:

(1) Review public–private partnership presolicitation
reports; and

(2) Make recommendations regarding the designation of a
public infrastructure asset as a public–private partnership.

10A–201.

(a) (1) (i) Except as provided in subparagraph (ii) of this paragraph AND
subject to paragraph (3) of this subsection, a reporting agency may not issue a
public notice of solicitation for a public–private partnership until a presolicitation report
concerning the proposed public–private partnership is submitted to the Comptroller, the
State Treasurer, the budget committees, and the Department of Legislative Services, in
accordance with § 2–1257 of the State Government Article.

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

2. For a transportation facilities project with
a total value that exceeds $500,000,000, the reporting agency shall
SUBMIT, IN ACCORDANCE WITH § 2–1257 OF THE STATE GOVERNMENT ARTICLE, THE PRESOLICITATION REPORT TO THE PUBLIC–PRIVATE PARTNERSHIP OVERSIGHT REVIEW BOARD.

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

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

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

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

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

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

(i) A PRESOLICITATION REPORT OF EACH CONTRACT UNDER THE PUBLIC–PRIVATE PARTNERSHIP; AND

(ii) IF A PROJECT REQUIRES AN ENVIRONMENTAL IMPACT STATEMENT UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT, A COMPLETED ENVIRONMENTAL IMPACT STATEMENT THAT COMPLIES WITH THE NATIONAL ENVIRONMENTAL POLICY ACT.

(4) (i) WITHIN 60 DAYS AFTER RECEIVING A PRESOLICITATION REPORT UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE PUBLIC–PRIVATE PARTNERSHIP OVERSIGHT REVIEW BOARD SHALL REPORT AND MAKE RECOMMENDATIONS ON THE PRESOLICITATION REPORT TO THE BOARD OF PUBLIC WORKS AND, IN ACCORDANCE WITH § 2–1257 OF THE STATE GOVERNMENT ARTICLE, THE BUDGET COMMITTEES.

(ii) THE BUDGET COMMITTEES SHALL HAVE 60 DAYS TO REVIEW AND COMMENT ON THE REPORT AND RECOMMENDATIONS OF THE
HOUSE BILL 1424

1 Public-Private Partnership Oversight Review Board before the Board of Public Works may designate the public infrastructure asset as a Public-Private partnership under subsection (c) of this section.

4 (1) [After] Subject to paragraph (3) of this subsection, after the budget committees' review and comment period on the presolicitation report and before issuing a public notice of solicitation, a reporting agency shall seek the official designation by the Board of Public Works of the public infrastructure asset as a public-private partnership and approval of the solicitation method.

9 (2) The request for official designation and approval shall:

10 (i) include a copy of the presolicitation report required under subsection (a) of this section;

12 (ii) describe the process for soliciting, evaluating, selecting, and awarding the public-private partnership;

14 (iii) include a preliminary solicitation schedule;

15 (iv) outline the organization and contents of the public notice of solicitation;

17 (v) provide a summary of the key terms of the proposed public-private partnership agreement; and

19 (vi) include any other information or requests determined to be relevant by the reporting agency.

21 (3) For a transportation facilities project with a total value that exceeds $500,000,000, before the reporting agency issues a public notice of solicitation, the budget committees shall have 1 year to review and comment on the designation by the Board of Public Works under paragraph (1) of this subsection.

26 10A–203.

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

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

31 1. the Comptroller, the State Treasurer, the budget committees, and the Department of Legislative Services, in accordance with § 2–1257 of the State Government Article; AND
2. FOR A PUBLIC–PRIVATE PARTNERSHIP WITH A TOTAL VALUE THAT EXCEEDS $500,000,000, THE LEGISLATIVE POLICY COMMITTEE, IN ACCORDANCE WITH § 2–1257 OF THE STATE GOVERNMENT ARTICLE;

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

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

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

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

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

2. AN INDEPENDENT RATING ASSESSMENT SURVEY IS COMPLETED FOR EACH CONTRACT UNDER THE PUBLIC–PRIVATE PARTNERSHIP, IN ACCORDANCE WITH PARAGRAPH (4) OF THIS SUBSECTION, BY AN INDEPENDENT AUDITOR OR A CREDIT RATING AGENCY SELECTED BY THE STATE TREASURER.

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

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

(ii) The budget committees may facilitate a faster review and comment period by sending a letter to the Board of Public Works supporting a proposed public–private partnership agreement in advance of the expiration of the 30–day review period.
(4) The independent rating assessment survey required under paragraph (1) of this subsection shall include:

(I) the credit strength of the private entity and private funding source;

(II) the impact of the proposed agreement on the State's credit rating;

(III) the impact of the proposed agreement on any local government's credit rating; and

(IV) a recommendation, to be included in the public-private partnership agreement, of the minimum credit rating to be maintained by the private entity and private funding source.

(C) The proposed public-private partnership agreement shall include financial information regarding each contractor and any subcontractor that will provide products or services under the public-private partnership agreement.

10A-401.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(XIII) THE MINIMUM CREDIT RATING TO BE MAINTAINED BY THE PRIVATE ENTITY AND PRIVATE FUNDING SOURCE RECOMMENDED UNDER § 10A–203(A) OF THIS TITLE.

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

(3) THE TERMS OF THE PUBLIC–PRIVATE PARTNERSHIP AGREEMENT PROVIDING FOR REVENUE-SHARING OR OTHER SHARING IN FEES OR CHARGES IN WHICH THE PUBLIC PARTICIPATES IN THE FINANCIAL UPSIDE OF ASSET PERFORMANCE OF THE PUBLIC INFRASTRUCTURE ASSET SHALL REQUIRE THE REIMBURSEMENT OF THE STATE FOR ADVANCED PROJECT EXPENSES.
(c) A public–private partnership agreement for a project involving road, highway, or bridge assets may not include a noncompete clause that would inhibit the planning, construction, or implementation of [State–funded] transit OR ROAD MAINTENANCE projects.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2020.