





MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

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 to 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

R1

0lr2690

By: Delegates Korman, Acevero, B. Barnes, D. Barnes, Barron, Barve, Carr, Charkoudian, Charles, Crutchfield, Cullison, Dumais, Fennell, W. Fisher, Fraser-Hidalgo, Gilchrist, Harrison, Healey, Holmes, Ivey, M. Jackson, Kaiser, Kelly, Kerr, Krimm, Lehman, J. Lewis, Lopez, Love, Luedtke, Moon, Palakovich Carr, Pena-Melnyk, Proctor, Qi, Queen, Reznik, Shetty, Solomon, Stewart, Terrasa, Turner, Valderrama, Valentino-Smith, Walker, Washington, Wilkins, Williams, and K. Young

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.



1 BY adding to
2 Article – Transportation
3 Section 4–408
4 Annotated Code of Maryland
5 (2015 Replacement Volume and 2019 Supplement)

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

8 Article – State Finance and Procurement

9 10A–404.

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

12 (2) “COMMUNITY BENEFIT AGREEMENT” MEANS AN AGREEMENT
13 APPLICABLE TO THE DEVELOPMENT OF ANY TRANSPORTATION PROJECT THAT:

14 (I) PROMOTES INCREASED OPPORTUNITIES FOR LOCAL
15 BUSINESSES AND SMALL, MINORITY, WOMEN–OWNED, AND VETERAN–OWNED
16 BUSINESSES IN THE TRANSPORTATION INDUSTRY;

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

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

26 (IV) PROMOTES CAREER TRAINING OPPORTUNITIES IN THE
27 TRANSPORTATION INDUSTRY FOR LOCAL RESIDENTS, VETERANS, WOMEN, AND
28 MINORITIES;

29 (V) PROVIDES FOR BEST EFFORTS AND EFFECTIVE OUTREACH
30 TO OBTAIN, AS A GOAL, THE USE OF A WORKFORCE THAT INCLUDES MINORITIES TO
31 THE EXTENT PRACTICABLE; AND

32 (VI) REFLECTS A 21ST–CENTURY LABOR–MANAGEMENT

1 APPROACH BASED ON COOPERATION, HARMONY, AND PARTNERSHIP.

2 (3) "DEPARTMENT" MEANS THE STATE DEPARTMENT OF
3 TRANSPORTATION AND INCLUDES THE OFFICE OF THE SECRETARY AND THE
4 MODAL ADMINISTRATIONS.

5 (4) "PROGRAM" MEANS THE I-495 AND I-270 PUBLIC-PRIVATE
6 PARTNERSHIP PROGRAM.

7 (B) THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT FOR THE PROGRAM
8 SHALL:

9 (1) (I) REQUIRE THAT AT LEAST 10% OF THE TOLL REVENUE FROM
10 TOLL LANES ON I-495 AND I-270 BE TRANSFERRED TO THE SPECIAL FUND
11 ESTABLISHED UNDER § 4-408 OF THE TRANSPORTATION ARTICLE; AND

12 (II) REQUIRE THE SPECIAL FUND TO BE BUDGETED IN
13 ACCORDANCE WITH MEMORANDUMS OF UNDERSTANDING BETWEEN THE
14 DEPARTMENT AND THE GOVERNING BODIES OF THE COUNTIES WHERE THE TOLL
15 FACILITIES THAT ARE PART OF THE PROGRAM ARE LOCATED;

16 (2) PROHIBIT THE DEPARTMENT FROM ISSUING A FINAL REQUEST
17 FOR PROPOSAL FOR THE PROJECT UNLESS THE REQUEST FOR PROPOSAL:

18 (I) GUARANTEES THAT ANY LOCAL, STATE, OR REGIONAL
19 TRANSIT SYSTEM MAY USE THE TOLL LANES ON I-495 AND I-270 FOR BUSES AND
20 OTHER MASS TRANSIT VEHICLES WITHOUT CHARGE; AND

21 (II) REQUIRES THAT THE AMERICAN LEGION BRIDGE HAVE A
22 SEPARATE PEDESTRIAN AND BICYCLE LANE OR LANES;

23 (3) PROHIBIT THE DEPARTMENT FROM USING STATE FUNDS TO
24 ACQUIRE LAND FOR THE PROGRAM BEFORE THE BOARD OF PUBLIC WORKS
25 APPROVES THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT;

26 (4) SUBJECT TO SUBSECTION (C)(1) OF THIS SECTION, PROHIBIT THE
27 DEPARTMENT FROM AWARDING A CONTRACT TO A BIDDER UNLESS THE BIDDER
28 AGREES TO INITIATE A COMMUNITY BENEFIT AGREEMENT THAT DEMONSTRATES
29 POSITIVE NET ECONOMIC, ENVIRONMENTAL, AND HEALTH BENEFITS TO THE STATE;

30 (5) SUBJECT TO SUBSECTION (C)(2) OF THIS SECTION, REQUIRE THE
31 DEPARTMENT TO SHARE ORIGIN AND DESTINATION DATA AND TRAFFIC AND
32 REVENUE MODEL DATA, CONSISTENT WITH ANY LICENSES OR OTHER LEGAL

1 AGREEMENTS RELATED TO THE DATA, WITH:

2 (I) COUNTY DEPARTMENTS OF TRANSPORTATION; AND

3 (II) THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING
4 COMMISSION;

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

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

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

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

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

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

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

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

31 Article - Transportation

1 4-313.

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

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

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

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

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

13 4-408.

14 AT LEAST 10% OF THE TOLL REVENUES FROM THE I-495 AND I-270
15 PUBLIC-PRIVATE PARTNERSHIP PROGRAM SHALL BE DISTRIBUTED TO A SPECIAL
16 FUND, TO BE USED ONLY FOR TRANSIT PROJECTS IN ACCORDANCE WITH
17 MEMORANDUMS OF UNDERSTANDING BETWEEN THE DEPARTMENT AND THE
18 GOVERNING BODIES OF THE COUNTIES WHERE THE TOLL FACILITIES THAT ARE
19 PART OF THE PROGRAM ARE LOCATED.

20 SECTION 2. AND BE IT FURTHER ENACTED, That:

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

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

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

30 (a) Section 1 of this Act shall take effect contingent on the receipt by the Board of
31 Public Works of a determination letter confirming that the reporting agencies plan to issue
32 a final request for proposals.

1 (b) If a determination letter requested under Section 2 of this Act is received on
2 or before October 1, 2021, Section 1 of this Act shall take effect on the date notice of the
3 letter is received by the Department of Legislative Services in accordance with Section 2 of
4 this Act.

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

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

HOUSE BILL 1424

P2, P1

Olr3441

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

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 Review Board; requiring the
5 Review Board to study and make recommendations regarding certain matters;
6 requiring a reporting agency to submit certain presolicitation reports to the Review
7 Board; requiring a certain reporting agency to include in presolicitation reports for
8 certain public-private partnerships presolicitation reports of certain contracts and a
9 certain environmental impact statement under certain circumstances; requiring the
10 Review Board, within a certain number of days after receiving a presolicitation
11 report, to report and make certain recommendations to the Board of Public Works
12 and certain budget committees; requiring that before the Board of Public Works may
13 make a certain designation certain budget committees have a certain number of days
14 to review and comment on a certain report; requiring that after the Board of Public
15 Works makes a certain designation certain budget committees have a certain period
16 of review and comment before a reporting agency issues a certain notice; requiring
17 certain proposed public-private partnership agreements to be submitted to the
18 Legislative Policy Committee; prohibiting the Board of Public Works from approving
19 a proposed agreement until the Legislative Policy Committee has reviewed and
20 commented on the public-private partnership if a certain review and comment
21 period is during a certain time and until a certain independent rating assessment
22 survey is completed under certain circumstances; requiring a certain independent
23 rating assessment survey to include certain information; requiring the proposed
24 agreement to include certain financial information; requiring that a certain
25 public-private partnership agreement include the minimum credit rating to be
26 maintained by a certain entity and funding source; requiring, under certain
27 circumstances, the terms of a public-private partnership to contain certain
28 provisions; extending a certain prohibition on noncompete clauses in certain
29 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.



1 regardless of funding source; altering a certain definition; defining a certain term;
2 making conforming changes; and generally relating to public-private partnerships.

3 BY repealing and reenacting, without amendments,
4 Article – State Finance and Procurement
5 Section 10A-101(a)
6 Annotated Code of Maryland
7 (2015 Replacement Volume and 2019 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article – State Finance and Procurement
10 Section 10A-101(b), 10A-201(a) and (c), 10A-203(a), and 10A-401(a) and (c)
11 Annotated Code of Maryland
12 (2015 Replacement Volume and 2019 Supplement)

13 BY adding to
14 Article – State Finance and Procurement
15 Section 10A-101(i), 10A-106, and 10A-203(c)
16 Annotated Code of Maryland
17 (2015 Replacement Volume and 2019 Supplement)

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

20 **Article – State Finance and Procurement**

21 10A-101.

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

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

26 (I) “TRANSPORTATION FACILITIES PROJECT” HAS THE MEANING STATED
27 IN § 4-101 OF THE TRANSPORTATION ARTICLE.

28 10A-106.

29 (A) THERE IS A PUBLIC-PRIVATE PARTNERSHIP OVERSIGHT REVIEW
30 BOARD.

31 (B) THE BOARD CONSISTS OF THE FOLLOWING MEMBERS:

32 (1) TWO MEMBERS OF THE SENATE OF MARYLAND, APPOINTED BY
33 THE PRESIDENT OF THE SENATE;

1 (2) TWO MEMBERS OF THE HOUSE OF DELEGATES, APPOINTED BY
2 THE SPEAKER OF THE HOUSE;

3 (3) THE COMPTROLLER, OR THE COMPTROLLER'S DESIGNEE;

4 (4) THE STATE TREASURER, OR THE STATE TREASURER'S DESIGNEE;
5 AND

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

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

11 (D) THE COMPTROLLER SHALL PROVIDE STAFF FOR THE BOARD.

12 (E) THE BOARD SHALL:

13 (1) REVIEW PUBLIC-PRIVATE PARTNERSHIP PRESOLICITATION
14 REPORTS; AND

15 (2) MAKE RECOMMENDATIONS REGARDING THE DESIGNATION OF A
16 PUBLIC INFRASTRUCTURE ASSET AS A PUBLIC-PRIVATE PARTNERSHIP.

17 10A-201.

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

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

30 2. FOR A TRANSPORTATION FACILITIES PROJECT WITH
31 A TOTAL VALUE THAT EXCEEDS \$500,000,000, THE REPORTING AGENCY SHALL

1 SUBMIT, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE,
2 THE PRESOLICITATION REPORT TO THE PUBLIC-PRIVATE PARTNERSHIP
3 OVERSIGHT REVIEW BOARD.

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

8 (ii) 1. If the total value of a proposed public-private partnership
9 reported in the presolicitation report under paragraph (b)(1) of this subsection exceeds
10 \$500,000,000, the budget committees may request an additional 15 days to review and
11 comment on the presolicitation report.

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

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

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

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

22 (I) A PRESOLICITATION REPORT OF EACH CONTRACT UNDER
23 THE PUBLIC-PRIVATE PARTNERSHIP; AND

24 (II) IF A PROJECT REQUIRES AN ENVIRONMENTAL IMPACT
25 STATEMENT UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT, A COMPLETED
26 ENVIRONMENTAL IMPACT STATEMENT THAT COMPLIES WITH THE NATIONAL
27 ENVIRONMENTAL POLICY ACT.

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

34 (II) THE BUDGET COMMITTEES SHALL HAVE 60 DAYS TO
35 REVIEW AND COMMENT ON THE REPORT AND RECOMMENDATIONS OF THE

1 **PUBLIC-PRIVATE PARTNERSHIP OVERSIGHT REVIEW BOARD BEFORE THE BOARD**
2 **OF PUBLIC WORKS MAY DESIGNATE THE PUBLIC INFRASTRUCTURE ASSET AS A**
3 **PUBLIC-PRIVATE PARTNERSHIP UNDER SUBSECTION (C) OF THIS SECTION.**

4 (c) (1) [After] **SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, AFTER**
5 the budget committees' review and comment period on the presolicitation report and before
6 issuing a public notice of solicitation, a reporting agency shall seek the official designation
7 by the Board of Public Works of the public infrastructure asset as a public-private
8 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
11 subsection (a) of this section;

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

14 (iii) include a preliminary solicitation schedule;

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

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

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

21 **(3) FOR A TRANSPORTATION FACILITIES PROJECT WITH A TOTAL**
22 **VALUE THAT EXCEEDS \$500,000,000, BEFORE THE REPORTING AGENCY ISSUES A**
23 **PUBLIC NOTICE OF SOLICITATION, THE BUDGET COMMITTEES SHALL HAVE 1 YEAR**
24 **TO REVIEW AND COMMENT ON THE DESIGNATION BY THE BOARD OF PUBLIC WORKS**
25 **UNDER PARAGRAPH (1) OF THIS SUBSECTION.**

26 10A-203.

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

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

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

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

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

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

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

12 **(V) FOR A PUBLIC-PRIVATE PARTNERSHIP WITH A TOTAL**
13 **VALUE THAT EXCEEDS \$500,000,000:**

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

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

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

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

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

1 **(4) THE INDEPENDENT RATING ASSESSMENT SURVEY REQUIRED**
2 **UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE:**

3 **(I) THE CREDIT STRENGTH OF THE PRIVATE ENTITY AND**
4 **PRIVATE FUNDING SOURCE;**

5 **(II) THE IMPACT OF THE PROPOSED AGREEMENT ON THE**
6 **STATE'S CREDIT RATING;**

7 **(III) THE IMPACT OF THE PROPOSED AGREEMENT ON ANY LOCAL**
8 **GOVERNMENT'S CREDIT RATING; AND**

9 **(IV) A RECOMMENDATION, TO BE INCLUDED IN THE**
10 **PUBLIC-PRIVATE PARTNERSHIP AGREEMENT, OF THE MINIMUM CREDIT RATING TO**
11 **BE MAINTAINED BY THE PRIVATE ENTITY AND PRIVATE FUNDING SOURCE.**

12 **(C) THE PROPOSED PUBLIC-PRIVATE PARTNERSHIP AGREEMENT SHALL**
13 **INCLUDE FINANCIAL INFORMATION REGARDING EACH CONTRACTOR AND ANY**
14 **SUBCONTRACTOR THAT WILL PROVIDE PRODUCTS OR SERVICES UNDER THE**
15 **PUBLIC-PRIVATE PARTNERSHIP AGREEMENT.**

16 10A-401.

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

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

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

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

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

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

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

31 **[(7)] (VII) the terms and conditions under which the reporting agency may**

1 provide services for a fee sufficient to cover both direct and indirect costs;

2 [[8]] (VIII) provisions for oversight and remedies and penalties for default;

3 [[9]] (IX) the terms and conditions under which the reporting agency
4 originating the public-private partnership shall be responsible for ongoing oversight;

5 [[10]] (X) the terms and conditions for audits by the State, including the
6 Office of Legislative Audits, related to the agreement's financial records and performance;

7 [[11]] (XI) the terms and conditions under which the public infrastructure
8 assets shall be returned to the State at the expiration or termination of the agreement;
9 [and]

10 [[12]] (XII) requirements for the private entity to provide performance
11 security and payment security in a form and in an amount determined by the responsible
12 public entity, except that:

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

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

20 (XIII) THE MINIMUM CREDIT RATING TO BE MAINTAINED BY THE
21 PRIVATE ENTITY AND PRIVATE FUNDING SOURCE RECOMMENDED UNDER §
22 10A-203(A) OF THIS TITLE.

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

30 (3) THE TERMS OF THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT
31 PROVIDING FOR REVENUE-SHARING OR OTHER SHARING IN FEES OR CHARGES IN
32 WHICH THE PUBLIC PARTICIPATES IN THE FINANCIAL UPSIDE OF ASSET
33 PERFORMANCE OF THE PUBLIC INFRASTRUCTURE ASSET SHALL REQUIRE THE
34 REIMBURSEMENT OF THE STATE FOR ADVANCED PROJECT EXPENSES.

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

5 **SECTION 2. AND BE IT FURTHER ENACTED,** That this Act shall take effect June
6 1, 2020.