

HOUSE BILL 936

C8, P2

5lr2372

By: **Delegate Jones**

Introduced and read first time: February 13, 2015

Assigned to: Environment and Transportation and Appropriations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 16, 2015

CHAPTER _____

1 AN ACT concerning

2 **Public-Private Partnership Agreements – Construction Contracts –**
3 **~~Performance~~ Security Requirements**

4 FOR the purpose of ~~requiring~~ clarifying the value on which requirements for the amount of
5 the payment security and certain performance security shall be based in a
6 public-private partnership agreement for a construction contract to include certain
7 requirements for performance security in accordance with certain provisions of law,
8 including a requirement to establish performance security on the value of certain
9 construction elements; and generally relating to public-private partnership
10 agreements for construction contracts.

11 BY repealing and reenacting, with amendments,
12 Article – State Finance and Procurement
13 Section 10A-401
14 Annotated Code of Maryland
15 (2009 Replacement Volume and 2014 Supplement)

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

18 **Article – State Finance and Procurement**

19 10A-401.

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

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

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

7 (3) the method and terms for revenue-sharing or other sharing in fees or
8 charges, in which the public participates in the financial upside of asset performance of the
9 public infrastructure asset;

10 (4) minimum quality standards, performance criteria, incentives, and
11 disincentives;

12 (5) operations and maintenance standards;

13 (6) the rights for inspection by the State;

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

16 (8) provisions for oversight and remedies and penalties for default;

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

19 (10) the terms and conditions for audits by the State, including the Office of
20 Legislative Audits, related to the agreement's financial records and performance;

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

23 (12) requirements for the private entity to provide performance **SECURITY**
24 and payment security in a form and in an amount determined by the responsible public
25 entity, except that:

26 **(I)** requirements for the ~~PERFORMANCE AND~~ payment security for
27 construction contracts shall be in accordance with Title 17, Subtitle 1 of this article,
28 ~~including the requirement that PERFORMANCE AND; AND~~

29 **(II) REQUIREMENTS FOR THE AMOUNT OF THE** payment security
30 **AND ANY PERFORMANCE SECURITY IN THE FORM OF A PERFORMANCE BOND FOR A**
31 **CONSTRUCTION CONTRACT** shall be ~~established~~ **BASED** on the value of the **RESPECTIVE**

1 construction elements of the public-private partnership agreement and not on the total
2 value of the public-private partnership agreement.

3 (b) (1) A public-private partnership agreement may include a provision that,
4 except as provided in paragraph (2) of this subsection, compensation may be provided for
5 competing infrastructure developments that directly result in a documented revenue loss
6 for the private entity in a public-private partnership.

7 (2) Compensation may not be provided as a result of State infrastructure
8 developments already in the State's Capital Improvement Program or Consolidated
9 Transportation Program planning documents at the time the public-private partnership
10 agreement is executed, safety initiatives, infrastructure improvements with minimal
11 capacity increases, or infrastructure for other transportation modes that are not the subject
12 of the public-private partnership.

13 (c) A public-private partnership agreement may not include a noncompete clause
14 for public-private partnership projects involving road, highway, or bridge assets.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2015.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.