

HOUSE BILL 936

C8, P2

5lr2372

By: **Delegate Jones**

Introduced and read first time: February 13, 2015

Assigned to: Environment and Transportation and Appropriations

A BILL ENTITLED

1 AN ACT concerning

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

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

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

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

16 **Article – State Finance and Procurement**

17 10A-401.

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

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

6 (5) operations and maintenance standards;

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

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

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

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

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

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

17 (12) requirements for the private entity to provide performance and
18 payment security in a form and in an amount determined by the responsible public entity,
19 except that requirements for the **PERFORMANCE AND** payment security for construction
20 contracts shall be in accordance with Title 17, Subtitle 1 of this article, including the
21 requirement that **PERFORMANCE AND** payment security shall be established on the value
22 of the construction elements of the public-private partnership agreement and not on the
23 total value of the public-private partnership agreement.

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

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

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

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