

# HOUSE BILL 1641

R2, P1, M3

8lr2931

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By: **Delegate Carr**

Introduced and read first time: February 9, 2018

Assigned to: Environment and Transportation

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## A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Transportation Public–Private Partnership Oversight Act**

3 FOR the purpose of exempting certain actions brought by certain individuals or entities  
4 against certain parties to a transportation–related public–private partnership  
5 agreement from certain provisions of the Environmental Standing Act related to  
6 relief and fee–shifting; stating the intent of the General Assembly regarding  
7 providing effective assistance of counsel to certain persons alleging a violation of a  
8 transportation–related public–private partnership; establishing the Office of  
9 Transportation Oversight as an independent unit in the Executive Branch of State  
10 government; providing for the appointment and term of the Director of the Office;  
11 specifying the duty, powers, and authority of the Office to regulate and oversee  
12 transportation–related public–private partnerships under certain circumstances  
13 and subject to certain limitations; requiring the Governor to annually appropriate a  
14 certain amount for the Office; requiring the Office to adopt certain regulations;  
15 establishing a rebuttable presumption that a certain party to a  
16 transportation–related public–private partnership agreement violated certain  
17 provisions of the agreement under certain circumstances; specifying that a party to  
18 a transportation–related public–private partnership agreement may overcome the  
19 rebuttable presumption under certain circumstances; requiring the Maryland Rules  
20 to ensure that certain legal matters shall, as circumstances require, be scheduled in  
21 an expeditious manner; requiring the Governor to ensure staff are available to  
22 establish the Office with the cost to be reimbursed from the Transportation Trust  
23 Fund under certain circumstances; stating the intent of the General Assembly  
24 regarding use of the Transportation Trust Fund to assist the Office in carrying out  
25 its duties and to pay certain legal fees; defining certain terms; and generally relating  
26 to transportation–related public–private partnership agreements and the  
27 establishment of the Office of Transportation Oversight.

28 BY repealing and reenacting, with amendments,

29 Article – Natural Resources

30 Section 1–504 and 1–507

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland  
2 (2012 Replacement Volume and 2017 Supplement)

3 BY adding to  
4 Article – Transportation  
5 Section 28–101 through 28–302 to be under the new title “Title 28. Transportation  
6 Oversight”  
7 Annotated Code of Maryland  
8 (2012 Replacement Volume and 2017 Supplement)

9 Preamble

10 WHEREAS, The General Assembly has reviewed the record and recent decisions by  
11 federal and state governments that reduce or limit the effectiveness of laws protecting the  
12 environment, consumers, labor, civil rights, and property rights and mitigation  
13 commitments made under those laws; and

14 WHEREAS, It is the expectation of the General Assembly that there will be  
15 additional infrastructure initiatives involving public–private partnerships that are more  
16 removed from State and federal oversight mechanisms; and

17 WHEREAS, Public–private partnership projects impact workers, consumers,  
18 property owners, small businesses, environmental justice communities, the environment,  
19 and preexisting transportation systems; and

20 WHEREAS, The General Assembly has determined that Maryland should enhance  
21 its protection of the public interests mentioned above; now, therefore,

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

24 **Article – Natural Resources**

25 1–504.

26 (a) This subtitle may not be construed to create or authorize any new substantive  
27 cause of action or theory of recovery not now recognized by the courts of this State, nor may  
28 it be construed as abrogating any cause of action or theory of recovery now recognized by  
29 the courts of this State but is for the sole purpose of providing standing to sue to the persons  
30 set forth in § 1–503 of this subtitle, subject to the provisions and limitations set forth in  
31 this subtitle.

32 (b) Except as provided in § 1–503(b) of this subtitle, nothing in this subtitle  
33 constitutes a waiver by the State or any agency of the defense of sovereign immunity, and  
34 this defense is expressly reserved.

1 (c) This subtitle does not authorize an action for monetary damages. The  
2 remedies available to any plaintiff who acquires standing to sue solely by virtue of this  
3 subtitle are limited to mandamus or equitable relief, including declaratory relief as to  
4 whether a permit or order has been unlawfully issued or is being violated, and a judgment  
5 or decree for monetary damages may not be awarded. However, a judgment for monetary  
6 damages may be awarded in any action where a judgment is appropriate to a plaintiff who  
7 has standing to sue other than by virtue of this subtitle.

8 (d) This subtitle does not abrogate the existing requirement and principles of  
9 exhaustion of administrative remedies, and this subtitle does not broaden, except as  
10 specifically set forth, the rights of intervention of persons in administrative hearings and  
11 in appeals from the hearings.

12 (e) This subtitle is not to be construed in any way to alter the present provisions  
13 of law relating to standing in any matter affecting local zoning.

14 (f) (1) Except as provided in this subtitle, relief may not be granted in any  
15 action filed under this subtitle with respect to any defendant who shows that the condition,  
16 activity, or failure complained of is under and in compliance with:

17 (i) A lawful, current permit or order of an agency of the State or a  
18 political subdivision authorized to issue the permit or order;

19 (ii) An order or other adjudication of a court of competent jurisdiction  
20 in a proceeding in which all of the material issues involved in the action were raised and  
21 determined, whether or not the parties to the prior litigation were identical to the parties  
22 in the pending action; or

23 (iii) A lawful current permit or order of an agency of the United  
24 States government authorized to issue the permit or order.

25 (2) If the court finds, upon clear and convincing evidence at any stage of  
26 the proceeding, that the condition, activity, or failure complained of exists and either  
27 presents an imminent danger to the health, welfare, or safety of the people of the State, or  
28 results in or is likely to result in irreversible or irreparable damage to the air, water, or  
29 other natural resources of the State, the court may remand the matter to the agency with  
30 instructions to consider and make factual determinations with respect to the material  
31 issues, as determined by the court, within a time considered reasonable by the court. A  
32 finding may not be made until the defendant has been provided an opportunity by the court  
33 to present evidence rebutting the plaintiff's evidence.

34 **(G) THIS SECTION DOES NOT APPLY TO AN ACTION BROUGHT BY A RESIDENT**  
35 **OR A COUNTY OR MUNICIPALITY OF THE STATE OR AN ENTITY OF THE EXECUTIVE**  
36 **BRANCH OF STATE GOVERNMENT AGAINST A PARTY TO A**  
37 **TRANSPORTATION-RELATED PUBLIC-PRIVATE PARTNERSHIP AGREEMENT**  
38 **ENTERED INTO UNDER TITLE 10A OF THE STATE FINANCE AND PROCUREMENT**

1 **ARTICLE, OR CONTRACTORS, AGENTS, OR ENTITIES ACTING IN FURTHERANCE OF**  
2 **THAT PARTNERSHIP AGREEMENT, FOR RELIEF AS A RESULT OF A VIOLATION OF THE**  
3 **PARTNERSHIP AGREEMENT, MITIGATION COMMITMENT RELATED TO THE PROJECT**  
4 **THE PARTNERSHIP IS UNDERTAKING, LAW, OR REGULATION.**

5 1-507.

6 (a) An action brought pursuant to this subtitle may not be compromised,  
7 discontinued, or dismissed by consent, by default, or for neglect to prosecute, except with  
8 the approval of the court. The approval may not be granted when the court determines that  
9 a monetary settlement, in excess of court costs and attorneys fees, has been offered by a  
10 defendant to a plaintiff, who has standing to sue only by virtue of this subtitle, as  
11 consideration for the settlement. If the court upon application of a defendant determines  
12 that an action in which a plaintiff has acquired standing solely by virtue of this subtitle  
13 was brought in bad faith or solely for purposes of harassment or delay, it may, after further  
14 hearing on this specific question, award to the defendant against the plaintiff a judgment  
15 for all or part of the court costs, including attorneys fees, as the defendant may establish  
16 were incurred by him in defending the action together with any damages sustained by the  
17 defendant as a result of the action having been brought, including witness fees.

18 (b) The Maryland Rules apply to all actions brought under this subtitle except  
19 where the provisions of this subtitle specifically describe other procedures.

20 **(C) THIS SECTION DOES NOT APPLY TO AN ACTION BROUGHT BY A RESIDENT**  
21 **OR A COUNTY OR MUNICIPALITY OF THE STATE OR AN ENTITY OF THE EXECUTIVE**  
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27 **PARTNERSHIP AGREEMENT, MITIGATION COMMITMENT RELATED TO THE PROJECT**  
28 **THE PARTNERSHIP IS UNDERTAKING, LAW, OR REGULATION.**

29 **Article – Transportation**

30 **TITLE 28. TRANSPORTATION OVERSIGHT.**

31 **SUBTITLE 1. GENERAL PROVISIONS.**

32 **28-101.**

33 **(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
34 **INDICATED.**

1 (B) (1) "AGENCY" MEANS AN ENTITY OF THE EXECUTIVE BRANCH OF  
2 STATE GOVERNMENT.

3 (2) "AGENCY" INCLUDES AN INDEPENDENT ENTITY OF THE  
4 EXECUTIVE BRANCH OF STATE GOVERNMENT.

5 (C) "DIRECTOR" MEANS THE DIRECTOR OF THE OFFICE OF  
6 TRANSPORTATION OVERSIGHT.

7 (D) "LOCAL GOVERNMENT" MEANS A COUNTY OR MUNICIPALITY OF THE  
8 STATE.

9 (E) "OFFICE" MEANS THE OFFICE OF TRANSPORTATION OVERSIGHT  
10 ESTABLISHED UNDER THIS TITLE.

11 (F) "PARTNERSHIP AGREEMENT" MEANS A TRANSPORTATION-RELATED  
12 PUBLIC-PRIVATE PARTNERSHIP AGREEMENT.

13 (G) "PUBLIC-PRIVATE PARTNERSHIP" HAS THE MEANING STATED IN §  
14 10A-101 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

15 SUBTITLE 2. OFFICE OF TRANSPORTATION OVERSIGHT.

16 28-201.

17 THE GENERAL ASSEMBLY INTENDS THIS SUBTITLE TO PROVIDE PERSONS  
18 AFFECTED BY A TRANSPORTATION-RELATED PUBLIC-PRIVATE PARTNERSHIP  
19 ASSISTANCE OF COUNSEL, EXPERT WITNESSES, AND THE RESOURCES FOR  
20 ACQUIRING EFFECTIVE ASSISTANCE OF COUNSEL AFTER AN INITIAL SHOWING OF  
21 SPECIFIC AND CREDIBLE EVIDENCE THAT A LAW, REGULATION, OR MITIGATION  
22 COMMITMENT RELATING TO A TRANSPORTATION-RELATED PUBLIC-PRIVATE  
23 PARTNERSHIP MAY HAVE BEEN VIOLATED OR NOT OBEYED IN A TIMELY MANNER.

24 28-202.

25 (A) THERE IS AN OFFICE OF TRANSPORTATION OVERSIGHT.

26 (B) THE OFFICE IS AN INDEPENDENT UNIT IN THE EXECUTIVE BRANCH OF  
27 STATE GOVERNMENT.

28 (C) THE OFFICE SHALL CARRY OUT THE FUNCTIONS ASSIGNED TO IT BY  
29 LAW.

1 **28-203.**

2 (A) WITH THE ADVICE AND CONSENT OF THE SENATE, THE GOVERNOR  
3 SHALL APPOINT A DIRECTOR OF THE OFFICE OF TRANSPORTATION OVERSIGHT.

4 (B) (1) THE TERM OF THE DIRECTOR IS 5 YEARS AND BEGINS ON JULY 1.

5 (2) AT THE END OF A TERM, THE DIRECTOR CONTINUES TO SERVE  
6 UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

7 (3) A DIRECTOR WHO IS APPOINTED AFTER A TERM HAS BEGUN  
8 SERVES FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED AND  
9 QUALIFIES.

10 **28-204.**

11 THE OFFICE HAS A DUTY TO OVERSEE THE DRAFTING, LEGISLATIVE REVIEW,  
12 IMPLEMENTATION, EXTENSION, AND TERMINATION OF TRANSPORTATION-RELATED  
13 PUBLIC-PRIVATE PARTNERSHIPS AND PARTNERSHIP AGREEMENTS.

14 **28-205.**

15 (A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE OFFICE IS  
16 CHARGED WITH THE FOLLOWING POWERS AND AUTHORITY TO ACCOMPLISH THE  
17 DUTIES OF THE OFFICE:

18 (1) THE POWER TO:

19 (I) REQUIRE MODIFICATIONS TO CONTRACTS, WORK ORDERS,  
20 OR DESIGNS RELATING TO PARTNERSHIP AGREEMENTS IN ORDER TO CARRY OUT  
21 THE DUTIES OF THE OFFICE UNDER THIS TITLE OR OTHERWISE TO PROTECT OR  
22 MORE FULLY AND FAIRLY SERVE THE RESIDENTS OF THE STATE OR CONSERVE OR  
23 RESTORE ITS NATURAL RESOURCES;

24 (II) REGULATE TRANSIT FARES AND SERVICES RELATED TO OR  
25 CARRIED OUT, APPLIED, OR USED UNDER A PARTNERSHIP AGREEMENT; AND

26 (III) APPLY LEGAL AND EQUITABLE REMEDIES TO ENFORCE ANY  
27 RELEVANT LAW, CONTRACT, OR MITIGATION COMMITMENT, AND IN THE  
28 REGULATION OF FARES AND SERVICES RELATED TO A PARTNERSHIP AGREEMENT;  
29 AND

30 (2) THE AUTHORITY TO:

1 (I) INSPECT, INVESTIGATE, OR MONITOR, ON ITS OWN  
2 INITIATIVE OR AT THE REQUEST OF AN AGENCY, A LOCAL GOVERNMENT, OR A  
3 RESIDENT OF THE STATE, ANY ISSUES REGARDING THE OPERATION OR  
4 IMPLEMENTATION OF A PARTNERSHIP AGREEMENT;

5 (II) CONSULT WITH AND MAKE RECOMMENDATIONS TO THE  
6 APPROPRIATE FEDERAL AND STATE AGENCIES REGARDING IMPROVEMENTS OR  
7 ISSUES IN A PARTNERSHIP AGREEMENT;

8 (III) BRING, ON ITS OWN INITIATIVE, AN ACTION AGAINST A  
9 PARTY TO A PARTNERSHIP AGREEMENT, OR CONTRACTORS, AGENTS, OR ENTITIES  
10 ACTING IN FURTHERANCE OF THE PARTNERSHIP AGREEMENT, FOR RELIEF AS A  
11 RESULT OF A VIOLATION OF THE PARTNERSHIP AGREEMENT, MITIGATION  
12 COMMITMENT RELATED TO THE PROJECT UNDERTAKEN BY THE PARTNERSHIP,  
13 LAW, OR REGULATION;

14 (IV) REPRESENT OR ADVISE AN AGENCY, A LOCAL  
15 GOVERNMENT, OR A RESIDENT OF THE STATE IN AN ACTION AGAINST A PARTY TO A  
16 PARTNERSHIP AGREEMENT FOR RELIEF AS A RESULT OF A VIOLATION OF THE  
17 PARTNERSHIP AGREEMENT, LAW, OR REGULATION; AND

18 (V) REQUIRE THAT A DEFENDANT OR RESPONDENT IN AN  
19 ADMINISTRATIVE PROCEEDING PAY THE REASONABLE ATTORNEY'S AND EXPERT  
20 WITNESS'S FEES AND COSTS OF THE PETITIONER OR PLAINTIFF AT EACH OF THE  
21 FOLLOWING PHASES:

22 1. ON AN INITIAL SHOWING OF SPECIFIC AND CREDIBLE  
23 EVIDENCE THAT A VIOLATION MAY HAVE BEEN COMMITTED;

24 2. ON EACH RULING OR APPEAL FINDING FOR THE  
25 PETITIONER OR PLAINTIFF; AND

26 3. ON COMPLETION OF THE CASE, UNLESS THE  
27 PETITIONER IS FOUND TO HAVE ACTED IN BAD FAITH.

28 (B) (1) THE DIRECTOR MAY EXERCISE THE POWERS AND AUTHORITY  
29 CONFERRED ON THE OFFICE ONLY IF THE DIRECTOR DETERMINES THAT AN ACTION  
30 IS IN THE BEST INTEREST OF THE STATE AND ITS CITIZENS.

31 (2) THE OBLIGATIONS OR RIGHTS OF A PARTY TO A PARTNERSHIP  
32 AGREEMENT MAY NOT BE IMPAIRED WITHOUT FAIR AND REASONABLE  
33 CONSIDERATION.

1 **28-206.**

2 **THE GOVERNOR SHALL APPROPRIATE AT LEAST \$20,000,000 IN THE ANNUAL**  
3 **BUDGET BILL FOR THE OPERATION OF THE OFFICE.**

4 **28-207.**

5 **THE OFFICE SHALL ADOPT REGULATIONS TO CARRY OUT THIS SUBTITLE.**

6 **SUBTITLE 3. ACTIONS.**

7 **28-301.**

8 **IN AN ACTION BROUGHT BY AN AGENCY, A LOCAL GOVERNMENT, OR A**  
9 **RESIDENT OF THE STATE AGAINST A PARTY TO A PARTNERSHIP AGREEMENT, OR**  
10 **CONTRACTORS, AGENTS, OR ENTITIES ACTING IN FURTHERANCE OF THAT**  
11 **AGREEMENT, FOR RELIEF AS A RESULT OF A VIOLATION OF THE PARTNERSHIP**  
12 **AGREEMENT, MITIGATION COMMITMENT RELATED TO THE PROJECT UNDERTAKEN**  
13 **BY THE PARTNERSHIP, LAW, OR REGULATION, EVIDENCE THAT THE PARTY OR ITS**  
14 **CONTRACTOR, SUBCONTRACTORS, OR AGENTS CAUSED THE BREACH CREATES A**  
15 **REBUTTABLE PRESUMPTION OF A VIOLATION THAT MAY BE OVERCOME BY A**  
16 **PREPONDERANCE OF THE EVIDENCE THAT THE PARTY IS IN COMPLIANCE WITH THE**  
17 **TERMS OF THE PARTNERSHIP AGREEMENT AND THAT THE PARTY HAS TAKEN EVERY**  
18 **REASONABLE STEP TO AVOID SUCH A BREACH.**

19 **28-302.**

20 **THE MARYLAND RULES SHALL ENSURE THAT LEGAL MATTERS BROUGHT IN**  
21 **ACCORDANCE WITH THIS SUBTITLE SHALL, AS CIRCUMSTANCES REQUIRE, BE**  
22 **SCHEDULED IN AN EXPEDITIOUS MANNER.**

23 **SECTION 2. AND BE IT FURTHER ENACTED,** That the Governor shall ensure  
24 that Executive Branch staff are available in a timely manner to establish the Office of  
25 Transportation Oversight in accordance with Title 28 of the Transportation Article as  
26 enacted by this Act, with the cost of their services to be reimbursed from the Transportation  
27 Trust Fund if an appropriation is pending or has not been made.

28 **SECTION 3. AND BE IT FURTHER ENACTED,** That it is the intent of the General  
29 Assembly that funds in the Transportation Trust Fund be used to assist the Office of  
30 Transportation Oversight in carrying out its duties, including the payment of attorney's  
31 fees and expert witness's fees for a legal or administrative proceeding.



1           SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2   October 1, 2018.