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SENATE BILL NO. 1107

Offered January 12, 2005

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A BILL to amend and reenact §§ 56-575.1 through 56-575.4, 56-575.7 through 56-575.11 and 56-575.16 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 56-575.3:1, and 56-575.9:1, relating to the Public Private Education Facilities and Infrastructure Act of 2002.

Patron—Stosch

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-575.1 through 56-575.4, 56-575.7 through 56-575.11 and 56-575.16 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 56-575.3:1, and 56-575.9:1 as follows:

§ 56-575.1. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affected local jurisdiction" means any county, city or town in which all or a portion of a qualifying project is located.

"Commission" means the State Corporation Commission.

"Comprehensive agreement" means the comprehensive agreement between the operator and the responsible public entity required by § 56-575.9.

"Develop" or "development" means to plan, design, develop, finance, lease, acquire, install, construct or expand.

"Lease payment" means any form of payment, including a land lease, by a public entity to the operator for the use of a qualifying project.

"Material default" means any default by the operator in the performance of its duties under subsection E of § 56-575.8 that jeopardizes adequate service to the public from a qualifying project.

"Operate" means to finance, maintain, improve, equip, modify, repair, or operate.

"Operator" means the private or other non-governmental entity that is responsible for any and all of the stages of a qualifying project, or a portion thereof, including (i) acquisition, (ii) design, (iii) construction, (iv) improvement, (v) renovation, (vi) expansion, (vii) equipping, (viii) maintenance, (ix) operation, (x) implementation, and (xi) installation.

"Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, or other private business entity.

"Public entity" means the Commonwealth and any agency or authority thereof, any county, city or town and any other political subdivision of the Commonwealth or any regional entity that serves a public purpose.

"Qualifying project" means (i) any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education; (ii) any building or facility for principal use by any public entity; (iii) any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity; (iv) utility and telecommunications and other communications infrastructure; (v) a recreational facility; or (vi) technology infrastructure, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services.

"Responsible public entity" means a public entity that has the power to acquire, design, construct, improve, renovate, expand, equip, maintain, operate, implement, or install operate the applicable qualifying project.

"Revenues" means all revenues, income, earnings, user fees, lease payments, or other service payments generated by arising out of or in connection with a qualifying project, including without limitation, money received as grants or otherwise from the United States of America, from any public entity, or from any agency or instrumentality of the foregoing in aid of such facility.

"Service contract" means a contract entered into between a public entity and the operator pursuant to § 56-575.5.

"Service payments" means payments to the operator of a qualifying project pursuant to a service contract.

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59 "State" means the Commonwealth of Virginia.

60 "User fees" mean the rates, fees or other charges imposed by the operator of a qualifying project for
61 use of all or a portion of such qualifying project pursuant to the comprehensive agreement pursuant to
62 § 56-575.9.

63 § 56-575.2. Declaration of public purpose.

64 A. The General Assembly finds that:

65 1. There is a public need for timely acquisition, design, construction, improvement, renovation,
66 expansion, equipping, maintenance, operation, implementation, or installation of education facilities,
67 technology infrastructure and other public infrastructure and government facilities within the
68 Commonwealth that serve a public need and purpose;

69 2. Such public need may not be wholly satisfied by existing methods of procurement in which
70 qualifying projects are acquired, designed, constructed, improved, renovated, expanded, equipped,
71 maintained, operated, implemented, or installed;

72 3. There are inadequate resources to develop new education facilities, technology infrastructure and
73 other public infrastructure and government facilities for the benefit of citizens of the Commonwealth,
74 and there is demonstrated evidence that public-private partnerships can meet these needs by improving
75 the schedule for delivery, lowering the cost, and providing other benefits to the public;

76 4. Financial incentives exist under state and federal tax provisions that promote public entities to
77 enter into partnerships with private entities to develop qualifying projects; and

78 5. Authorizing private entities to ~~acquire, design, construct, improve, renovate, expand, equip,~~
79 ~~maintain, operate, implement, or install~~ *develop or operate* one or more qualifying projects may result in
80 the availability of such projects to the public in a more timely or less costly fashion, thereby serving the
81 public safety, benefit, and welfare; and

82 6. *Allowing public entities to contract with private entities for the development or operation of*
83 *qualifying facilities will provide significant benefits to the citizens of the commonwealth by making*
84 *additional facilities available to the general public while minimizing the need for additional public tax*
85 *revenues.*

86 B. An action under § 56-575.4 shall serve the public purpose of this chapter if such action facilitates
87 the timely acquisition, design, construction, improvement, renovation, expansion, equipping,
88 maintenance, operation, implementation, or installation of qualifying projects.

89 C. It is the intent of this chapter, among other things, to *encourage investment in the Commonwealth*
90 *by private entities and* facilitate the bond financing provisions of the Economic Growth and Tax Relief
91 Reconciliation Act of 2001 or other similar financing mechanisms, private capital and other funding
92 sources that support the acquisition, design, construction, improvement, renovation, expansion,
93 equipping, maintenance, operation, implementation, or installation of qualifying projects, to the end that
94 financing for qualifying projects be expanded and accelerated to improve and add to the convenience of
95 the public, and such that public and private entities may have the greatest possible flexibility in
96 contracting with each other for the provision of the public services that are the subject of this chapter.

97 D. This chapter shall be liberally construed in conformity with the purposes hereof.

98 § 56-575.3. Prerequisite for operation of a qualifying project.

99 A. Any private entity seeking authorization under this chapter to ~~acquire, design, construct, improve,~~
100 ~~renovate, expand, equip, maintain, operate, implement, or install~~ *develop or operate* a qualifying project
101 shall first obtain approval of the responsible public entity under § 56-575.4. Such private entity may
102 initiate the approval process by requesting approval pursuant to subsection A of § 56-575.4 or the
103 responsible public entity may request proposals or invite bids pursuant to subsection B of § 56-575.4.

104 B. Any facility, building, infrastructure or improvement included in a proposal as a part of a
105 qualifying project shall be identified specifically or conceptually.

106 C. Upon receipt by the responsible public entity of a proposal submitted by a private entity initiating
107 the approval process pursuant to subsection A of § 56-575.4, the responsible public entity shall
108 determine whether to accept such proposal for consideration in accordance with § 56-575.16. If the
109 responsible public entity determines not to accept for consideration the proposal submitted by the private
110 entity pursuant to subsection A of § 56-575.4, it shall return the proposal, together with all fees and
111 accompanying documentation, to the private entity.

112 D. The responsible public entity may reject any proposal initiated by a private entity pursuant to
113 subsection A of § 56-575.4 at any time.

114 § 56-575.3:1. *Adoption of guidelines by responsible public entities.*

115 A. *Any responsible public entity requesting or considering a proposal for a qualifying facility shall*
116 *adopt and make publicly available procedures that are sufficient to enable the responsible public entity*
117 *to comply with this chapter. Such procedures shall guide the selection of projects under the purview of*
118 *the responsible public entity and include, but not be limited to, reasonable criteria for choosing among*
119 *competitive proposals and timelines for selecting proposals and negotiating a comprehensive agreement.*

120 B. *Such procedures shall permit accelerated selection, review and documentation timelines for*

121 proposals involving a qualifying facility that the responsible public entity deems a priority, which will be
122 funded, in whole or in substantial part, by a dedicated revenue source, such as user fees, lease
123 payments, service payments, special district assessments or a long-term maintenance agreement, or debt
124 or equity investments by the private entity. Such procedures may also permit accelerated selection,
125 review and documentation timelines for proposals that relate to a qualifying facility with an aggregate
126 estimated cost in excess of \$200 million that, in the judgment of the responsible public entity, has a high
127 probability of success, involves a less complex plan of finance and requires no substantial state funding.

128 § 56-575.4. Approval of qualifying projects by the responsible public entity.

129 A. A private entity may request approval of a qualifying project by the responsible public entity.
130 Any such request shall be accompanied by the following material and information unless waived by the
131 responsible public entity:

132 1. A topographic map (1:2,000 or other appropriate scale) indicating the location of the qualifying
133 project;

134 2. A description of the qualifying project, including the conceptual design of such facility or facilities
135 or a conceptual plan for the provision of services or technology infrastructure, and a schedule for the
136 initiation of and completion of the qualifying project to include the proposed major responsibilities and
137 timeline for activities to be performed by both the public and private entity;

138 3. A statement setting forth the method by which the operator proposes to secure any necessary
139 property interests required for the qualifying project. The statement shall include: (i) the names and
140 addresses, if known, of the current owners of the property needed for the qualifying project, (ii) the
141 nature of the property interests to be acquired, and (iii) any property that the responsible public entity
142 expects it will be requested to condemn;

143 4. Information relating to the current plans for development of facilities or technology infrastructure
144 to be used by a public entity that are similar to the qualifying project being proposed by the private
145 entity, if any, of each affected local jurisdiction;

146 5. A list of all permits and approvals required for the qualifying project from local, state, or federal
147 agencies and a projected schedule for obtaining such permits and approvals;

148 6. A list of public utility facilities, if any, that will be crossed by the qualifying project and a
149 statement of the plans of the operator to accommodate such crossings;

150 7. A statement setting forth the operator's general plans for financing the qualifying project including
151 the sources of the operator's funds *and identification of any dedicated revenue source or proposed debt
152 or equity investment on the behalf of the operator*;

153 8. The names and addresses of the persons who may be contacted for further information concerning
154 the request;

155 9. User fees, lease payments, and other service payments over the term of the comprehensive
156 agreement pursuant to § 56-575.9 and the methodology and circumstances for changes to such user fees,
157 lease payments, and other service payments over time; and

158 10. Such additional material and information as the responsible public entity may reasonably request.

159 B. The responsible public entity may request proposals or invite bids from private entities for the
160 acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation,
161 implementation, or installation *development or operation* of qualifying projects.

162 C. The responsible public entity may grant approval of the ~~acquisition, construction, improvement,~~
163 ~~renovation, expansion, maintenance, operation, implementation, or installation~~ *development or operation*
164 of the education facility, technology infrastructure or other public infrastructure or government facility
165 needed by a public entity as a qualifying project, or the design or equipping of a qualifying project so
166 acquired, constructed, improved, renovated, expanded, maintained, operated, implemented, or
167 installed *developed or operated*, if the responsible public entity determines that the project serves the
168 public purpose of this chapter. The responsible public entity may determine that the ~~acquisition, design,~~
169 ~~construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or~~
170 ~~installation~~ *development or operation* of the qualifying project as a qualifying project serves such public
171 purpose if:

172 1. There is a public need for or benefit derived from the qualifying project of the type the private
173 entity proposes as a qualifying project;

174 2. The estimated cost of the qualifying project is reasonable in relation to similar facilities; and

175 3. The private entity's plans will result in the timely ~~acquisition, design, construction, improvement,~~
176 ~~renovation, expansion, equipping, maintenance, operation, implementation, or installation~~ *development or*
177 *operation* of the qualifying project.

178 In evaluating any request, the responsible public entity may rely upon internal staff reports prepared
179 by personnel familiar with the operation of similar facilities or the advice of outside advisors or
180 consultants having relevant experience.

181 D. The responsible public entity may charge a reasonable fee to cover the costs of processing,

182 reviewing and evaluating the request, including without limitation, reasonable attorney's fees and fees for
 183 financial, technical, and other necessary advisors or consultants.

184 E. The approval of the responsible public entity shall be subject to the private entity's entering into a
 185 comprehensive agreement pursuant to § 56-575.9 with the responsible public entity.

186 F. In connection with its approval of the qualifying project, the responsible public entity shall
 187 establish a date for the commencement of activities related to the qualifying project. The responsible
 188 public entity may extend such date from time to time.

189 G. The responsible public entity shall take appropriate action to protect confidential and proprietary
 190 information provided by the operator pursuant to an agreement under subdivision 11 of § 2.2-3705.6.

191 H. Nothing in this chapter or in a comprehensive agreement entered into pursuant to this chapter
 192 shall be deemed to enlarge, diminish or affect the authority, if any, otherwise possessed by the
 193 responsible public entity to take action that would impact the debt capacity of the Commonwealth.

194 § 56-575.7. Dedication of public property.

195 Any public entity may dedicate any property interest, including land, improvements, and tangible
 196 personal property, that it has for public use in a qualifying project if it finds that so doing will serve the
 197 public purpose of this chapter by minimizing the cost of a qualifying project to the public entity or
 198 reducing the delivery time of a qualifying project. In connection with such dedication, a public entity
 199 may convey any property interest that it has, subject to the conditions imposed by general law, to the
 200 operator subject to the provisions of this chapter, for such consideration as such public entity may
 201 determine. The aforementioned consideration may include, without limitation, the agreement of the
 202 operator to operate the qualifying project. *The property interests that the public entity may convey to the*
 203 *private entity in connection with a dedication under this section may include licenses, franchises,*
 204 *easements, or any other right or interest the public entity deems appropriate.*

205 § 56-575.8. Powers and duties of the operator.

206 A. The operator shall have all power allowed by law generally to a private entity having the same
 207 form of organization as the operator and shall have the power to ~~acquire, design, construct, improve,~~
 208 ~~renovate, maintain, expand, equip, operate, implement, or install~~ *develop or operate* the qualifying
 209 project and collect lease payments, impose user fees or enter into service contracts in connection with
 210 the use thereof.

211 B. The operator may own, lease or acquire any other right to use or operate the qualifying project.

212 C. ~~Any financing of the qualifying project may be in such amounts and upon such terms and~~
 213 ~~conditions as may be determined by the operator. Without limiting the generality of the foregoing, the~~
 214 ~~operator may issue debt, equity or other securities or obligations, enter into sale and leaseback~~
 215 ~~transactions and secure any financing with a pledge of, security interest in, or lien on, any or all of its~~
 216 ~~property, including all of its property interests in the qualifying project.~~

217 D.C. In operating the qualifying project, the operator may:

- 218 1. Make classifications according to reasonable categories for assessment of user fees; and
- 219 2. With the consent of the responsible public entity, make and enforce reasonable rules to the same
 220 extent that the responsible public entity may make and enforce rules with respect to similar facilities.

221 E.D. The operator shall:

222 1. ~~Acquire, design, construct, improve, renovate, expand, equip, maintain, operate, implement, or~~
 223 ~~install~~ *Develop or operate* the qualifying project in a manner that is acceptable to the responsible public
 224 entity, all in accordance with the provisions of the comprehensive agreement pursuant to § 56-575.9;

225 2. Keep the qualifying project open for use by the members of the public at all times, or as
 226 appropriate based upon the use of the facility, after its initial opening upon payment of the applicable
 227 user fees, lease payments, or service payments; provided that the qualifying project may be temporarily
 228 closed because of emergencies or, with the consent of the responsible public entity, to protect the safety
 229 of the public or for reasonable construction or maintenance procedures. In the event that a qualifying
 230 project is technology infrastructure, access may be limited as determined by the conditions of the
 231 comprehensive agreement;

232 3. Maintain, or provide by contract for the maintenance or upgrade of the qualifying project, if
 233 required by the comprehensive agreement;

234 4. Cooperate with the responsible public entity in making best efforts to establish any interconnection
 235 with the qualifying project requested by the responsible public entity; and

236 5. Comply with the provisions of the comprehensive agreement and any *lease or service contract*.

237 F. Nothing shall prohibit an operator of a qualifying project from providing additional services for
 238 the qualifying project to public or private entities other than the responsible public entity so long as the
 239 provision of additional service does not impair the operator's ability to meet its commitments to the
 240 responsible public entity pursuant to the comprehensive agreement as provided for in § 56-575.9.

241 § 56-575.9. Comprehensive agreement.

242 A. Prior to acquiring, designing, constructing, improving, renovating, expanding, equipping,
 243 maintaining, operating, implementing, or installing the qualifying project, the private entity shall enter

244 into a comprehensive agreement with the responsible public entity. The comprehensive agreement shall
245 provide for:

246 1. Delivery of maintenance, performance and payment bonds, ~~or~~ letters of credit, *or completion*
247 *guarantees* in connection with the acquisition, design, construction, improvement, renovation, expansion,
248 equipping, maintenance, operation, implementation, or installation of the qualifying project, in the forms
249 and amounts satisfactory to the responsible public entity and in compliance with § 2.2-4337 for those
250 components of the qualifying project that involve construction;

251 2. Review of plans and specifications for the qualifying project by the responsible public entity and
252 approval by the responsible public entity if the plans and specifications conform to standards acceptable
253 to the responsible public entity. This shall not be construed as requiring the private entity to complete
254 design of a qualifying project prior to the execution of a comprehensive agreement;

255 3. Inspection of the qualifying project by the responsible public entity to ensure that the operator's
256 activities are acceptable to the responsible public entity in accordance with the provisions of the
257 comprehensive agreement;

258 4. Maintenance of a policy or policies of public liability insurance (copies of which shall be filed
259 with the responsible public entity accompanied by proofs of coverage); *or* self-insurance, *each* in form
260 and amount satisfactory to the responsible public entity and reasonably sufficient to insure coverage of
261 tort liability to the public and employees and to enable the continued operation of the qualifying project;

262 5. Monitoring of the practices of the operator by the responsible public entity to ensure that the
263 qualifying project is properly maintained;

264 6. Reimbursement to be paid to the responsible public entity for services provided by the responsible
265 public entity;

266 7. Filing of appropriate financial statements on a periodic basis; and

267 8. Policies and procedures governing the rights and responsibilities of the responsible public entity
268 and the operator in the event the comprehensive agreement is terminated or there is a material default by
269 the operator. Such policies and procedures shall include conditions governing assumption of the duties
270 and responsibilities of the operator by the responsible public entity and the transfer or purchase of
271 property or other interests of the operator by the responsible public entity.

272 B. The comprehensive agreement shall provide for such user fees, lease payments, or service
273 payments as may be established from time to time by agreement of the parties. A copy of any service
274 contract shall be filed with the responsible public entity. In negotiating user fees under this section, the
275 parties shall establish payments or fees that are the same for persons using the facility under like
276 conditions and that will not materially discourage use of the qualifying project. The execution of the
277 comprehensive agreement or any amendment thereto shall constitute conclusive evidence that the user
278 fees, lease payments, or service payments provided for comply with this chapter. User fees or lease
279 payments established in the comprehensive agreement as a source of revenues may be in addition to, or
280 in lieu of, service payments.

281 C. In the comprehensive agreement, the responsible public entity may agree to make grants or loans
282 to the operator from time to time from amounts received from the federal, state, or local government or
283 any agency or instrumentality thereof.

284 D. The comprehensive agreement shall incorporate the duties of the operator under this chapter and
285 may contain such other terms and conditions that the responsible public entity determines serve the
286 public purpose of this chapter. Without limitation, the comprehensive agreement may contain provisions
287 under which the responsible public entity agrees to provide notice of default and cure rights for the
288 benefit of the operator and the persons specified therein as providing financing for the qualifying
289 project. The comprehensive agreement may contain such other lawful terms and conditions to which the
290 operator and the responsible public entity mutually agree, including, without limitation, provisions
291 regarding unavoidable delays or provisions providing for a loan of public funds to the operator to
292 acquire, design, construct, improve, renovate, expand, equip, maintain, operate, implement, or install one
293 or more qualifying projects. The comprehensive agreement may also contain provisions where the
294 authority and duties of the operator under this chapter shall cease, and the qualifying project is dedicated
295 to the responsible public entity or, if the qualifying project was initially dedicated by an affected local
296 jurisdiction, to such affected local jurisdiction for public use.

297 E. Any changes in the terms of the comprehensive agreement, as may be agreed upon by the parties
298 from time to time, shall be added to the comprehensive agreement by written amendment.

299 F. When a responsible public entity that is not an agency or authority of the Commonwealth enters
300 into a comprehensive agreement pursuant to this chapter, it shall within 30 days thereafter submit a copy
301 of the comprehensive agreement to the Auditor of Public Accounts.

302 § 56-575.9:1. *Predevelopment agreements; comprehensive agreements with multiple private entities.*

303 A. *Prior to or in connection with the negotiation of the comprehensive agreement, the responsible*
304 *public entity may enter into a memorandum of understanding, binding preliminary agreement, or other*

305 *similar pre-development agreement with the private entity proposing the development or operation of the*
306 *qualifying facility or facilities. Such pre-development agreement may (i) permit the private entity to*
307 *commence preliminary activities for which it shall be compensated relating to the proposed qualifying*
308 *facility, including project planning and development, early right-of-way acquisition, preliminary design,*
309 *conducting revenue studies, and ascertaining the availability of financing for the proposed qualifying*
310 *facility or facilities; (ii) establish the process and timing of the negotiation of the comprehensive*
311 *agreement; and (iii) contain any other provisions the parties may deem appropriate.*

312 *B. Notwithstanding anything to the contrary in this chapter, a responsible public entity may enter*
313 *into a comprehensive agreement with multiple private entities if the responsible public entity determines*
314 *in writing that it is in the public interest to do so.*

315 § 56-575.10. Federal, state and local assistance.

316 *A. Any financing of a qualifying facility may be in such amounts and upon such terms and conditions*
317 *as may be determined by the parties to the comprehensive agreement. Without limiting the generality of*
318 *the terms and conditions of the financing, the private entity and the responsible public entity may utilize*
319 *any and all funding resources available to them and may, to the fullest extent permitted by applicable*
320 *law, issue debt, equity, or other securities or obligations, enter into leases, access any designated trust*
321 *funds, borrow or accept grants from any state infrastructure bank, and secure any financing with a*
322 *pledge of, security interest in, or lien on, any or all of its property, including all of its property interests*
323 *in the qualifying facility.*

324 *B. The responsible public entity may take any action to obtain federal, state, or local assistance for a*
325 *qualifying project that serves the public purpose of this chapter and may enter into any contracts*
326 *required to receive such assistance. If the responsible public entity is a state agency, any funds received*
327 *from the state or federal government or any agency or instrumentality thereof shall be subject to*
328 *appropriation by the General Assembly. The responsible public entity may determine that it serves the*
329 *public purpose of this chapter for all or any portion of the costs of a qualifying project to be paid,*
330 *directly or indirectly, from the proceeds of a grant or loan made by the local, state, or federal*
331 *government or any agency or instrumentality thereof.*

332 § 56-575.11. Material default; remedies.

333 *A. In the event of a material default by the operator, the responsible public entity may elect to*
334 *assume the responsibilities and duties of the operator of the qualifying project, and in such case, it shall*
335 *succeed to all of the right, title and interest in such qualifying project, subject to any liens on revenues*
336 *previously granted by the operator to any person providing financing thereof.*

337 *B. Any responsible public entity having the power of condemnation under state law may exercise*
338 *such power of condemnation to acquire the qualifying project in the event of a material default by the*
339 *operator. Any person who has provided financing for the qualifying project, and the operator, to the*
340 *extent of its capital investment, may participate in the condemnation proceedings with the standing of a*
341 *property owner.*

342 *C. The responsible public entity may terminate, with cause, the comprehensive agreement and*
343 *exercise any other rights and remedies that may be available to it at law or in equity.*

344 *D. The responsible public entity may make or cause to be made any appropriate claims under the*
345 *maintenance, performance, or payment bonds; or lines of credit required by subsection A 1 of*
346 *§ 56-575.9.*

347 *E. In the event the responsible public entity elects to take over a qualifying project pursuant to*
348 *subsection A, the responsible public entity may ~~acquire, design, construct, improve, renovate, operate,~~*
349 *~~expand, equip, maintain, implement, or install~~ develop or operate the qualifying project, impose user*
350 *fees, impose and collect lease payments for the use thereof and comply with any service contracts as if*
351 *it were the operator. Any revenues that are subject to a lien shall be collected for the benefit of and paid*
352 *to secured parties, as their interests may appear, to the extent necessary to satisfy the operator's*
353 *obligations to secured parties, including the maintenance of reserves. Such liens shall be correspondingly*
354 *reduced and, when paid off, released. Before any payments to, or for the benefit of, secured parties, the*
355 *responsible public entity may use revenues to pay current operation and maintenance costs of the*
356 *qualifying project, including compensation to the responsible public entity for its services in operating*
357 *and maintaining the qualifying project. The right to receive such payment, if any, shall be considered*
358 *just compensation for the qualifying project. The full faith and credit of the responsible public entity*
359 *shall not be pledged to secure any financing of the operator by the election to take over the qualifying*
360 *project. Assumption of operation of the qualifying project shall not obligate the responsible public entity*
361 *to pay any obligation of the operator from sources other than revenues.*

362 § 56-575.16. Procurement.

363 *The Virginia Public Procurement Act (§ 2.2-4300 et seq.) and any interpretations, regulations, or*
364 *guidelines of the Division of Engineering and Buildings of the Department of General Services or the*
365 *Virginia Information Technologies Agency, including the Capital Outlay Manual and those*
366 *interpretations, regulations or guidelines developed pursuant to §§ 2.2-1131, 2.2-1132, 2.2-1133,*

367 2.2-1149, and 2.2-1502, except those developed by the Division or the Virginia Information
 368 Technologies Agency in accordance with this chapter when the Commonwealth is the responsible public
 369 entity, shall not apply to this chapter. However, a responsible public entity may enter into a
 370 comprehensive agreement only in accordance with procedures adopted by it as follows:

371 1. A responsible public entity may enter into a comprehensive agreement in accordance with
 372 procedures adopted by it that are consistent with procurement through competitive sealed bidding as
 373 defined in § 2.2-4301 and subsection B of § 2.2-4310.

374 2. A responsible public entity may enter into a comprehensive agreement in accordance with
 375 procedures adopted by it that are consistent with the procurement of "other than professional services"
 376 through competitive negotiation as defined in § 2.2-4301 and subsection B of § 2.2-4310. Such
 377 responsible public entity shall not be required to select the proposal with the lowest price offer, but may
 378 consider price as one factor in evaluating the proposals received. *Other factors that may be considered*
 379 *include (i) the proposed cost of the qualifying facility; (ii) the general reputation, industry experience,*
 380 *and financial capacity of the private entity; (iii) the proposed design of the qualifying transportation*
 381 *facility; (iv) the eligibility of the facility for accelerated selection, review, and documentation timelines*
 382 *under the responsible public entities guidelines; (v) local citizen and government concerns; (vi) benefits*
 383 *to the public; (vii) the private entity's compliance with a minority business enterprise participation plan*
 384 *or good faith effort to comply with the goals of such plan; (viii) the private entity's plans to employ*
 385 *local contractors and residents; and (ix) other criteria that the responsible public entity deems*
 386 *appropriate.*

387 3. A responsible public entity shall proceed in accordance with the procedures adopted by it pursuant
 388 to subdivision 1 unless it determines that proceeding in accordance with the procedures adopted by it
 389 pursuant to ~~this~~ subdivision 2 is likely to be advantageous to the responsible public entity and the
 390 public, based on (i) the probable scope, complexity or ~~urgency~~ *priority* of the project; ~~or~~ (ii) risk
 391 sharing, added value, ~~or debt or equity investments by the private entity; or~~ (iii) an increase in funding,
 392 ~~dedicated revenue source or other economic benefit from the project that would not otherwise be~~
 393 available. When the responsible public entity determines to proceed according to the procedures adopted
 394 by it pursuant to this subdivision, it shall state the reasons for its determination in writing. If a state
 395 agency is the responsible public entity, the approval of the responsible Governor's Secretary, or the
 396 Governor, shall be required before the responsible public entity may enter into a comprehensive
 397 agreement pursuant to this subdivision.

398 ~~3.4.~~ Nothing in this chapter shall authorize or require that a responsible public entity obtain
 399 professional services through any process except in accordance with procedures adopted by it that are
 400 consistent with the procurement of "professional services" through competitive negotiation as defined in
 401 § 2.2-4301 and subsection B of § 2.2-4310.

402 4.5. A responsible public entity shall not proceed to consider any request by a private entity for
 403 approval of a qualifying project pursuant to subsection A of § 56-575.4 until the responsible public
 404 entity has adopted and made publicly available procedures that are sufficient to enable the responsible
 405 public entity to comply with this chapter. Such procedures shall:

406 a. If the responsible public entity is not an agency or authority of the Commonwealth, require the
 407 responsible public entity to engage the services of qualified professionals, which may include an
 408 architect, professional engineer or certified public accountant, not employed by the responsible public
 409 entity to provide to the responsible public entity independent analysis regarding the specifics,
 410 advantages, disadvantages, and the long- and short-term costs of any request by a private entity for
 411 approval of a qualifying project, unless the governing body of the responsible public entity determines
 412 that such analysis of a request by a private entity for approval of a qualifying project shall be performed
 413 by employees of the responsible public entity.

414 b. Provide for the posting and publishing of public notice of a private entity's request for approval of
 415 a qualifying project pursuant to subsection A of § 56-575.4 and a reasonable time period, determined by
 416 the responsible public entity to be appropriate to encourage competition and public-private partnerships
 417 pursuant to the goals of this chapter, such reasonable period not to be less than 45 days, during which
 418 the responsible public entity will receive competing proposals pursuant to that subsection.

419 Such procedures shall also require advertising the public notice in the Virginia Business
 420 Opportunities publication and posting a notice on the Commonwealth's electronic procurement website.

421 5.6. Once a comprehensive agreement has been entered into, and the process of bargaining of all
 422 phases or aspects of the comprehensive agreement is complete, a responsible public entity shall make
 423 available, upon request, procurement records in accordance with § 2.2-4342.

424 6.7. A responsible public entity that is a school board or a county, city or town may enter into a
 425 comprehensive agreement under this chapter only with the approval of the local governing body.