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HOUSE BILL NO. 955

Offered January 9, 2008

Prefiled January 8, 2008

A BILL to amend and reenact § 56-575.1 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 30-280.1 and 56-575.9:2, relating to the Public Private Education Facilities and Infrastructure Act of 2002; gain-sharing initiatives; technology projects.

Patrons—Nixon, Athey, Bell, Byron, Carrico, Cole, Cosgrove, May, Rust, Scott, J.M. and Sherwood

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 56-575.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 30-280.1 and 56-575.9:2 as follows:

§ 30-280.1. Review of certain technology projects.

A. Any responsible public entity may request the Commission to perform the preliminary review of an unsolicited proposal for a qualifying project that (i) consists of technology infrastructure, services or applications anticipating substantial savings to the responsible public entity, and (ii) includes a gain-sharing component providing for the private entity to share in a percentage of the savings. Such request shall be accompanied by a summary of the major points of the unsolicited proposal and the basis for the anticipated savings and the proposed arrangement for gain sharing. Within 10 days of the receipt of the request for preliminary review, the Commission shall determine whether to accept or decline the request for review.

B. The Commission shall complete the preliminary review of any unsolicited proposal that it has accepted and provide its findings and recommendations within 30 days of receiving the request from the responsible public entity.

C. As used in this section, "gain sharing" means the same as that term is defined in § 56-575.1.

§ 56-575.1. Definitions.

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

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

"Appropriating body" means the body responsible for appropriating or authorizing funding to pay for a qualifying project.

"Commission" means the State Corporation Commission.

"Comprehensive agreement" means the comprehensive agreement between the private entity 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.

"Gain sharing" means a provision of an interim or comprehensive agreement where the responsible public entity and the private entity agree to share a percentage of any savings that are realized and that can be attributed to the efforts of the private entity.

"Interim agreement" means an agreement between a private entity and a responsible public entity that provides for phasing of the development or operation, or both, of a qualifying project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the project that constitutes activity on any part of the qualifying project.

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

"Material default" means any default by the private entity 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.

"Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, non-profit entity, or other 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, any public body politic and corporate, 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

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59 other facility primarily used for school events), and any depreciable property provided for use in a
60 school facility that is operated as part of the public school system or as an institution of higher
61 education; (ii) any building or facility that meets a public purpose and is developed or operated by or
62 for any public entity; (iii) any improvements, together with equipment, necessary to enhance public
63 safety and security of buildings to be principally used by a public entity; (iv) utility and
64 telecommunications and other communications infrastructure; (v) a recreational facility; (vi) technology
65 infrastructure ~~and~~, services *and applications*, including, but not limited to, telecommunications,
66 automated data processing, word processing and management information systems, and related
67 information, equipment, goods and services; (vii) any technology, equipment, or infrastructure designed
68 to deploy wireless broadband services to schools, businesses, or residential areas; or (viii) any
69 improvements necessary or desirable to any unimproved locally- or state-owned real estate.

70 "Responsible public entity" means a public entity that has the power to develop or operate the
71 applicable qualifying project.

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

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

79 "Service payments" means payments to the private entity of a qualifying project pursuant to a service
80 contract.

81 "State" means the Commonwealth of Virginia.

82 "User fees" mean the rates, fees or other charges imposed by the private entity of a qualifying
83 project for use of all or a portion of such qualifying project pursuant to the comprehensive agreement
84 pursuant to § 56-575.9.

85 *§56-575.9:2. Use of a gain-sharing component for technology-related qualifying projects.*

86 *A responsible public entity may include a gain-sharing component in any interim or comprehensive*
87 *agreement for a qualifying project consisting of technology infrastructure, services or applications that*
88 *will provide for the private entity to receive a percentage of the savings that are realized from and*
89 *attributed to the efforts of the private entity. No gain-sharing component may provide for the return of*
90 *more than 33 percent of the realized savings to the private entity.*