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SENATE BILL NO. 778

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the House Committee on Commerce and Labor  
on February 26, 2008)

(Patron Prior to Substitute—Senator Herring)

A BILL to amend and reenact § 56-542 of the Code of Virginia, relating to the powers of the State Corporation Commission under the Virginia Highway Corporation Act.

Be it enacted by the General Assembly of Virginia:

1. That § 56-542 of the Code of Virginia is amended and reenacted as follows:

§ 56-542. Powers of the Commission.

A. As used in this section:

"CPI" means the Consumer Price Index - U.S. City Averages for All Urban Consumers, All Items (not seasonally adjusted) as reported by the U.S. Department of Labor, Bureau of Labor Statistics; however, if the CPI is modified such that the base year of the CPI changes, the CPI shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics, and if the CPI is discontinued or revised, such other historical index or computation approved by the Commission shall be used for purposes of this section that would obtain substantially the same result as would have been obtained if the CPI had not been discontinued or revised.

"Real GDP" means the Annual Real Gross Domestic Product as reported by the U.S. Department of Commerce, Bureau of Economic Analysis.

B. The Commission shall have the power to regulate the operator under this title as a public service corporation. The Commission shall also have the power, and be charged with the duties of reviewing and approving or denying the application, of supervising and controlling the operator in the performance of its duties under this chapter and title, and of correcting any abuse in the performance of the operator's public duties. Pursuant to § 56-36, the Commission shall require from the operator a verified report describing the nature of its contractual and other relationships with individuals or entities contracting with the operator for the provision of significant financial, construction, or maintenance services. The Commission shall review the report and such other materials as it shall deem necessary for the purpose of determining improper or excessive costs, and shall exclude from the operator's costs any amounts which it finds are improper or excessive. The Commission also shall have the duty and authority to approve or revise the toll rates charged by the operator. Initial rates shall be approved if they appear reasonable to the user in relation to the benefit obtained, not likely to materially discourage use of the roadway and provide the operator no more than a reasonable rate of return as determined by the Commission. Thereafter, the Commission, upon application, complaint or its own initiative, and after investigation, may order substituted for any toll being charged by the operator, a toll which is set at a level which is reasonable to the user in relation to the benefit obtained and which will not materially discourage use of the roadway by the public and which will provide the operator no more than a reasonable return as determined by the Commission. Included in such review shall be consideration of contractual relationships between the operator and individuals or entities that are closely associated or affiliated with the operator to assure that the terms on such contractual relationships are no less favorable or unfavorable to the operator than what it could obtain in an arm's-length transaction. Also included in the evaluation of costs are local property taxes paid by the operator. The Commission may charge a reasonable annual fee to cover the costs of supervision and controlling the operator in the performance of its duties under this chapter and pursuant to this section.

C. Pursuant to § 56-36, the Commission shall require from an operator a verified copy of the operator's annual audited financial statements, which includes a statement of the operator's ownership. The operator shall file such statement within four months from the end of the operator's fiscal year.

D. The Commission also shall have the duty and authority to approve or revise toll rates charged by the operator.

E. The proceeds and funding provided to the operator from any future bond indenture or similar credit agreement must be used for the purpose of acquiring, designing, permitting, building, constructing, improving, equipping, modifying, operating, maintaining, reconstructing, restoring, rehabilitating, or renewing the roadway property, including payment of property taxes, and for the purpose of paying reasonable arm's-length fees, development costs, and expenses incurred by the operator or a related individual or entity in executing such financial transaction, unless otherwise authorized by the Commission.

F. Effective January 1, 2013, and notwithstanding any other provision of law, upon application of and public notification by the operator, filed not more often than once within any 12-month period, the Commission shall approve to become effective within 45 days any request to increase tolls by a

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60 percentage that (i) is equal to the increase in the CPI, as defined in subsection A, from the date the  
61 Commission last approved a toll increase, plus one percent, (ii) is equal to the increase in the real  
62 GDP, as defined in subsection A, from the date the Commission last approved a toll increase, or (iii)  
63 2.8 percent, whichever is greatest, which increase in the tolls approved by the Commission is hereafter  
64 referred to as the "annual percentage increase." In addition, the operator may request in its  
65 application, and the Commission shall further approve, an addition to the toll increase to allow the  
66 operator to include, in its tolls, the amount by which its local property taxes paid in the immediately  
67 preceding calendar year increased by more than the annual percentage increase above such payments  
68 for the previous calendar year.

69 Any request by the operator for an increase in tolls by a greater percentage than as provided in the  
70 preceding paragraph shall be considered for approval by the Commission only upon presentation of an  
71 independent grade traffic and revenue study and a finding by the operator that (a) toll rates subject to  
72 the preceding paragraph will not be sufficient to permit the operator to maintain the minimum coverage  
73 ratio set forth in the rate covenant provisions of its bond indenture or similar credit agreement, (b) such  
74 greater proposed tolls appear to be reasonable to the user in relation to the benefit obtained and are  
75 not likely to materially discourage use of the roadway, and (c) such greater proposed tolls provide the  
76 operator no more than a reasonable rate of return as determined by the Commission. Such request by  
77 an operator shall not be made as a result of a change in control of the operator or the project  
78 roadway. As used herein, a "change in control of the operator" means the sale or transfer of 50 percent  
79 or more of the assets of the operator or the acquisition or disposal of 50 percent or more of the  
80 outstanding shares of stock of the operator, if it is a corporation, or analogous interest if the operator  
81 is another form of entity.

82 **2. That the provisions of this act amending the Code of Virginia by adding subsection F of**  
83 **§ 56-542 shall become effective on July 1, 2009.**