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SENATE BILL NO. 778

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor
on February 12, 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 of 1988.*

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. 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.

B. 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.

C. 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 that:~~

1. *Is reasonable to the user in relation to the benefit obtained and which will;*

2. *Will not materially discourage use of the roadway by the public; and which will*

3. *Will provide the operator the opportunity to earn no more than a reasonable return as determined by the Commission.*

D. *If a change in the ownership of the facility or change in control of an operator occurs, whether or not accompanied by the issuance of securities as defined in subsection A of § 56-57 and § 56-65.1, the Commission, in any subsequent proceeding to set the level of a toll charged by the operator, shall ensure that the price paid in connection with the change in ownership or control, and any costs and other factors attributable to or resulting from the change in ownership or control, if they would contribute to an increase in the level of the toll, are excluded from the Commission's determination of the operator's reasonable return, in order to ensure that a change in ownership or control does not increase the level of the toll above that level that would otherwise have been required under subsection C if the change in ownership or control had not occurred. As used in this subsection, "control" has the same meaning as provided in § 56-88.1.*

E. Pursuant to § 56-36, the Commission shall require an operator to provide copies of annual audited financial statements for the operator, together with 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.

F. In addition to its powers under subsection B, the Commission shall have the power, in any proceeding involving the toll rates charged by an operator, to exclude in whole or in part from the accounts of the operator any payment or compensation to an affiliated interest for any services rendered or property or service furnished under contracts or arrangements with such affiliated interest, if it shall appear and be established upon investigation that such payment or compensation or such contract or arrangement is not consistent with the public interest. In such proceeding any payment or compensation may be disapproved or disallowed by the Commission, in whole or in part, unless satisfactory proof is submitted to the Commission of the cost to the affiliated interest rendering the service or furnishing the property or service above described.

G. 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.

2. That the Office of the Attorney General is requested, by September 1, 2008, to report to the General Assembly regarding (i) the findings from its independent financial review of the operator, as defined in § 56-536 of the Code of Virginia, and (ii) any recommendations regarding any amendments to the Virginia Highway Corporation Act of 1988 (§ 56-535 et seq.).