

2008 SPECIAL SESSION II

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HOUSE BILL NO. 6044

Offered June 24, 2008

A BILL to amend and reenact § 56-560 of the Code of Virginia, as it shall become effective, relating to consideration of proposals under the Public-Private Transportation Act of 1995 by the Department of Transportation, the Commonwealth Transportation Board, and the Commonwealth Transportation Commissioner.

Patron—Hamilton

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That § 56-560 of the Code of Virginia, as it shall become effective, is amended and reenacted as follows:

§ 56-560. Approval by the responsible public entity.

A. The private entity may request approval by the responsible public entity. Any such request shall be accompanied by the following material and information unless waived by the responsible public entity in its guidelines or other instructions given, in writing, to the private entity with respect to the transportation facility or facilities that the private entity proposes to develop and/or operate as a qualifying transportation facility:

1. A topographic map (1:2,000 or other appropriate scale) indicating the location of the transportation facility or facilities;

2. A description of the transportation facility or facilities, including the conceptual design of such facility or facilities and all proposed interconnections with other transportation facilities;

3. The proposed date for development and/or operation of the transportation facility or facilities along with an estimate of the life-cycle cost of the transportation facility as proposed;

4. A statement setting forth the method by which the private entity proposes to secure any property interests required for the transportation facility or facilities;

5. Information relating to the current transportation plans, if any, of each affected jurisdiction;

6. A list of all permits and approvals required for developing and/or operating improvements to the transportation facility or facilities from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;

7. A list of public utility facilities, if any, that will be crossed by the transportation facility or facilities and a statement of the plans of the private entity to accommodate such crossings;

8. A statement setting forth the private entity's general plans for developing and/or operating the transportation facility or facilities, including identification of any revenue, public or private, or proposed debt or equity investment or concession proposed by the private entity;

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

10. Information on how the private entity's proposal will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency; and

11. Such additional material and information as the responsible public entity may reasonably request pursuant to its guidelines or other written instructions.

B. The responsible public entity may request proposals from private entities for the development and/or operation of transportation facilities. The responsible public entity shall not charge a fee to cover the costs of processing, reviewing, and evaluating proposals received in response to such requests.

C. The responsible public entity may grant approval of the development and/or operation of the transportation facility or facilities as a qualifying transportation facility if the responsible public entity determines that it serves the public purpose of this chapter. The responsible public entity may determine that the development and/or operation of the transportation facility or facilities as a qualifying transportation facility serves such public purpose if:

1. There is a public need for the transportation facility or facilities the private entity proposes to develop and/or operate as a qualifying transportation facility;

2. The transportation facility or facilities and the proposed interconnections with existing transportation facilities, and the private entity's plans for development and/or operation of the qualifying transportation facility or facilities, are, in the opinion of the responsible public entity, reasonable and will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency;

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59 3. The estimated cost of developing and/or operating the transportation facility or facilities is
60 reasonable in relation to similar facilities; and

61 4. The private entity's plans will result in the timely development and/or operation of the
62 transportation facility or facilities or their more efficient operation.

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

66 D. The responsible public entity may charge a reasonable fee to cover the costs of processing,
67 reviewing, and evaluating the request submitted by a private entity pursuant to subsection A, including
68 without limitation, reasonable attorney's fees and fees for financial and other necessary advisors or
69 consultants. The responsible public entity shall also develop guidelines that establish the process for the
70 acceptance and review of a proposal from a private entity pursuant to subsections A and B. Such
71 guidelines shall establish a specific schedule for review of the proposal by the responsible public entity,
72 a process for alteration of that schedule by the responsible public entity if it deems that changes are
73 necessary because of the scope or complexity of proposals it receives, the process for receipt and review
74 of competing proposals, and the type and amount of information that is necessary for adequate review of
75 proposals in each stage of review. For qualifying transportation facilities that have approved or pending
76 state and federal environmental clearances, secured significant right of way, have previously allocated
77 significant state or federal funding, or exhibit other circumstances that could reasonably reduce the
78 amount of time to develop and/or operate the qualifying transportation facility in accordance with the
79 purpose of this chapter, the guidelines shall provide for a prioritized documentation, review, and
80 selection process.

81 E. The approval of the responsible public entity shall be subject to the private entity's entering into
82 an interim agreement or a comprehensive agreement with the responsible public entity. For any project
83 with an estimated construction cost of over \$50 million, the responsible public entity also shall require
84 the private entity to pay the costs for an independent audit of any and all traffic and cost estimates
85 associated with the private entity's proposal, as well as a review of all public costs and potential
86 liabilities to which taxpayers could be exposed (including improvements to other transportation facilities
87 that may be needed as a result of the proposal, failure by the private entity to reimburse the responsible
88 public entity for services provided, and potential risk and liability in the event the private entity defaults
89 on the comprehensive agreement or on bonds issued for the project). This independent audit shall be
90 conducted by an independent consultant selected by the responsible public entity, and all such
91 information from such review shall be fully disclosed.

92 F. In connection with its approval of the development and/or operation of the transportation facility
93 or facilities as a qualifying transportation facility, the responsible public entity shall establish a date for
94 the acquisition of or the beginning of construction of or improvements to the qualifying transportation
95 facility. The responsible public entity may extend such date from time to time.

96 G. The responsible public entity shall take appropriate action, as more specifically set forth in its
97 guidelines, to protect confidential and proprietary information provided by the private entity pursuant to
98 an agreement under subdivision 11 of § 2.2-3705.6.

99 H. The responsible public entity may also apply for, execute, and/or endorse applications submitted
100 by private entities to obtain federal credit assistance for qualifying projects developed and/or operated
101 pursuant to this chapter.

102 *I. The following shall apply whenever a solicited or unsolicited proposal is considered by a state
103 agency acting as a responsible public entity:*

104 *1. After acceptance of the proposal, the agency shall promptly post on the Internet and other public
105 media general specifications of the proposal for the purposes of public notice; however, copies of the
106 proposal, absent any confidential and proprietary information, shall be made available upon request;*

107 *2. After the publication of the proposal, the agency shall allow no longer than 90 days, unless
108 otherwise directed by a responsible federal agency, for receipt of competing proposals;*

109 *3. Following the end of such publication period, the agency shall, within 60 days, conduct an initial
110 review of all competing proposals and present its recommendations to the Commissioner regarding
111 whether to accept or reject any or all such proposals;*

112 *4. Following the acceptance of the proposal by the Commissioner and an opportunity for public
113 comment on the proposal, the agency shall, within 60 days, return to the private entity with a request
114 for a detailed submission, to include such information required pursuant to the responsible public
115 entity's guidelines, and the private entity shall complete and resubmit such submission in no more than
116 120 days;*

117 *5. Any such resubmitted proposal shall be acted upon by the agency within 90 days in the form of a
118 formal recommendation in writing to the person at the responsible public entity authorized to execute a
119 comprehensive agreement; and*

120 *6. After receipt of the formal recommendation, action to begin negotiations on an interim or*

121 *comprehensive agreement shall begin within 30 days. If, in the opinion of the appropriate policy or*
122 *supervisory board, the complexity, scope, number of proposals, or other compelling reason necessitates*
123 *an extension of time, then the time restrictions of subdivisions 3, 4, and 5 may be waived for particular*
124 *proposals pursuant to a majority vote of the appropriate policy or supervisory board.*

125 **2. That the provisions of this act shall apply only to proposals submitted on or after January 1,**
126 **2008, to a responsible public entity that is a state agency.**

127 **3. That the Virginia Department of Transportation shall complete the detailed phase review and**
128 **select a private entity with which it will execute an interim or comprehensive agreement for the**
129 **construction of the Downtown Tunnel/Midtown Tunnel/MLK Extension project no later than July**
130 **1, 2009.**

131 **4. That the Virginia Department of Transportation shall solicit proposals for the improvement of**
132 **the Hampton Roads Bridge-Tunnel no later than January 1, 2009.**

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