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SENATE BILL NO. 1153

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on January 28, 2009)

(Patrons Prior to Substitute—Senators McDougle and Stosch [SB 1244])

A BILL to amend and reenact §§ 56-575.1, 56-575.17, and 56-575.18 of the Code of Virginia, relating to the Public-Private Education Facilities and Infrastructure Act of 2002; definitions; review of proposals.

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-575.1, 56-575.17, and 56-575.18 of the Code of Virginia are amended and reenacted as follows:

§ 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.

"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 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 that meets a public purpose and is developed or operated by or for 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; (vi) technology infrastructure, services, and applications, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services; (vii) any services designed to increase the productivity or efficiency of the responsible public entity through the ~~direct or indirect~~ use of technology or other means, (viii) any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas; or (ix) any improvements necessary or desirable to any unimproved locally- or state-owned real estate.

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

"Revenues" means all revenues, income, earnings, user fees, lease payments, or other service payments arising out of or in connection with supporting the development or operation of 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

60 facility.

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

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

65 "State" means the Commonwealth of Virginia.

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

69 § 56-575.17. Posting of conceptual proposals; public comment; public access to procurement records.

70 A. Conceptual proposals submitted in accordance with subsection A or B of § 56-575.4 to a
71 responsible public entity shall be posted by the responsible public entity within 10 working days after
72 acceptance of such proposals as follows:

73 1. For responsible public entities that are state agencies, departments, and institutions, posting shall
74 be on the Department of General Service's web-based electronic procurement program commonly known
75 as "eVA;" and

76 2. For responsible public entities that are local bodies, posting shall be on the responsible public
77 entity's website or by publication, in a newspaper of general circulation in the area in which the contract
78 is to be performed, of a summary of the proposals and the location where copies of the proposals are
79 available for public inspection. Posting may also be on the Department of General Service's web-based
80 electronic procurement program commonly known as "eVA," in the discretion of the local responsible
81 public entity.

82 In addition to the posting requirements, at least one copy of the proposals shall be made available for
83 public inspection. Nothing in this section shall be construed to prohibit the posting of the conceptual
84 proposals by additional means deemed appropriate by the responsible public entity so as to provide
85 maximum notice to the public of the opportunity to inspect the proposals. Trade secrets, financial
86 records, or other records of the private entity excluded from disclosure under the provisions of
87 subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the
88 responsible public entity and the private entity.

89 B. ~~In addition to the posting requirements of subsection A, at least 30 days prior to entering into an~~
90 ~~interim or comprehensive agreement, a~~ *The* responsible public entity shall hold a public hearing on the
91 proposals *during the proposal review process, but not later than 30 days prior to entering into an*
92 *interim or comprehensive agreement. After the public hearing is held, no additional posting shall be*
93 *required.*

94 C. Once the negotiation phase for the development of an interim or a comprehensive agreement is
95 complete, but before an interim agreement or a comprehensive agreement is entered into, a responsible
96 public entity shall make available the proposed agreement in a manner provided in subsection A.

97 D. Once an interim agreement or a comprehensive agreement has been entered into, a responsible
98 public entity shall make procurement records available for public inspection, upon request. For the
99 purposes of this subsection, procurement records shall not be interpreted to include (i) trade secrets of
100 the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial
101 records, including balance sheets or financial statements of the private entity that are not generally
102 available to the public through regulatory disclosure or otherwise.

103 E. Cost estimates relating to a proposed procurement transaction prepared by or for a responsible
104 public entity shall not be open to public inspection.

105 F. Any inspection of procurement transaction records under this section shall be subject to reasonable
106 restrictions to ensure the security and integrity of the records.

107 G. The provisions of this section shall apply to accepted proposals regardless of whether the process
108 of bargaining will result in an interim or a comprehensive agreement.

109 § 56-575.18. Auditor of Public Accounts.

110 The Auditor of Public Accounts shall periodically review interim and comprehensive agreements
111 entered into pursuant to this chapter to ensure compliance with the provisions of this chapter. *Copies of*
112 *the agreements and supporting documents must be electronically filed with the Auditor of Public*
113 *Accounts. Electronic agreements shall be made available in the online database maintained pursuant to*
114 *§ 30-133.*

115 **2. That the Chairmen of the Senate Committee on General Laws and Technology and the House**
116 **Committee on General Laws shall convene a working group to meet at least annually to review**
117 **the model guidelines used by responsible public entities for consideration of proposals under the**
118 **Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq. of the Code**
119 **of Virginia) and to consider best practices recommendations for use by responsible public entities.**
120 **The findings of the working group shall be reported to the Chairman of each respective**
121 **Committee on or before September 30 of each year.**