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HOUSE BILL NO. 1539

Offered January 12, 2011

Prefiled December 30, 2010

A BILL to amend and reenact § 56-542 of the Code of Virginia and to amend the Code of Virginia by adding in Article 15 of Chapter 1 of Title 33.1 a section numbered 33.1-223.2:25, relating to increases in tolls for use of certain highway facilities.

Patron—LeMunyon

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That § 56-542 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 15 of Chapter 1 of Title 33.1 a section numbered 33.1-223.2:25 as follows:

§ 33.1-223.2:25. Increases in toll for Dulles Toll Road; local governing body approvals required.

No toll imposed and collected for use of the Dulles Toll Road shall be increased unless and until such increase shall have been approved by a majority vote of the governing body of every county, city, and town through which the facility passes.

§ 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.

C. Pursuant to § 56-36, the Commission shall require annually 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. 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 of such contractual relationships are no less favorable or unfavorable to the operator than what it could obtain in an arm's-length transaction.

D. 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.

E. 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

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HB1539

59 the operator's reasonable return, in order to ensure that a change in ownership or control does not
60 increase the level of the toll above that level that would otherwise have been required under subsection
61 D or subdivision I 3 if the change in ownership or control had not occurred. As used in this subsection,
62 "control" has the same meaning as provided in § 56-88.1.

63 F. Pursuant to § 56-36, the Commission shall require an operator to provide copies of annual audited
64 financial statements for the operator, together with a statement of the operator's ownership. The operator
65 shall file such statement within four months from the end of the operator's fiscal year.

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

72 H. The Commission may charge a reasonable annual fee to cover the costs of supervision and
73 controlling the operator in the performance of its duties under this chapter and pursuant to this section.

74 I. Effective January 1, 2013, through January 1, 2020, and notwithstanding any other provision of
75 law:

76 1. Upon application of and public notification by the operator, filed not more often than once within
77 any 12-month period, the Commission shall approve to become effective within 45 days any request to
78 increase tolls by a percentage that (i) is equal to the increase in the CPI, as defined in subsection A,
79 from the date the Commission last approved a toll increase, plus one percent, (ii) is equal to the increase
80 in the real GDP, as defined in subsection A, from the date the Commission last approved a toll increase,
81 or (iii) 2.8 percent, whichever is greatest, which increase in the tolls approved by the Commission is
82 hereafter referred to as the "annual percentage increase."

83 2. The operator additionally may request in an application made pursuant to subdivision I 1, and the
84 Commission shall further approve, an addition to the toll increase to allow the operator to include, in its
85 tolls, the amount by which its local property taxes paid in the immediately preceding calendar year
86 increased by more than the annual percentage increase above such payments for the previous calendar
87 year.

88 3. Any request by the operator for an increase in the toll rates by a greater percentage than as
89 provided in subdivision I 1 shall be considered for approval by the Commission only upon presentation
90 of an independent grade traffic and revenue study and a finding by the Commission that (a) toll rates
91 subject to the preceding paragraph will not be sufficient to permit the operator to maintain the minimum
92 coverage ratio set forth in the rate covenant provisions of its bond indenture or similar credit agreement,
93 (b) such greater proposed tolls are reasonable to the user in relation to the benefit obtained and will not
94 materially discourage use of the roadway by the public, and (c) such greater proposed tolls provide the
95 operator no more than a reasonable rate of return as determined by the Commission; however, the
96 Commission shall not approve an increase in the toll rates pursuant to this subdivision that exceeds the
97 percentage increase necessary to permit the operator to maintain the minimum coverage ratio described
98 in clause (a). Such request by an operator shall not be made as a result of a change in control of the
99 operator or the project roadway. As used herein, a "change in control of the operator" means the sale or
100 transfer of 25 percent or more of the assets of the operator or the acquisition or disposal of 25 percent
101 or more of the outstanding shares of stock of the operator, if it is a corporation, or analogous interest if
102 the operator is another form of entity.

103 *Notwithstanding the foregoing provisions of this section, no increase in any toll shall be charged or*
104 *collected by the operator unless such increase shall have been approved by a majority vote of the*
105 *governing body of every county, city, and town through which the facility for the highway controlled by*
106 *the operator passes.*