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HOUSE BILL NO. 1246

Offered January 20, 2012

A *BILL to amend and reenact §§ 56-542 and 56-543 of the Code of Virginia, relating to powers and duties of State Corporation Commission and roadway operators under the Virginia Highway Corporation Act of 1988.*

Patron—Ramadan

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That §§ 56-542 and 56-543 of the Code of Virginia are 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.

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. *In the course of approving and revising such toll rates, the Commission shall also take into consideration proceeds accruing to the operator as the result of leases entered into pursuant to subdivision A 2 of § 56-543.*

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 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 D or subdivision I 3 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.

F. Pursuant to § 56-36, the Commission shall require an operator to provide copies of annual audited

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59 financial statements for the operator, together with a statement of the operator's ownership. The operator
60 shall file such statement within four months from the end of the operator's fiscal year.

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

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

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

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

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

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

98 § 56-543. Powers and duties of roadway operator.

99 A. The operator shall have all power allowed by law generally to persons having the same form of
100 organization as the operator, including, without limitation, the authority to operate the roadway and
101 charge tolls for the use thereof, and may pledge any revenue net of operational expenses realized from
102 tolls charged for the use of the roadway in order to secure repayment of any obligations incurred for the
103 construction, enlargement or operation of such roadway. Any financing of the acquisition, construction,
104 enlargement, or operation of the roadway may be in such amounts and upon such terms and conditions
105 as may be deemed necessary or appropriate by the operator to provide for the acquisition, construction,
106 enlargement, and operation of the roadway, issuance costs, other financing obligations, and reasonable
107 reserves. The Commonwealth shall not obligate its full faith and credit on any financing of the operator.
108 Assumption of operation of the project shall not obligate the Commonwealth to pay any obligation of
109 the operator whether secured or otherwise, from sources other than toll revenue. Subject to applicable
110 permit requirements, the operator shall have the authority to cross any canal or navigable watercourse so
111 long as the crossing does not unreasonably interfere with navigation and use of the waterway. In
112 operating the roadway, the operator may:

113 1. Classify traffic according to reasonable categories for assessment of tolls *in amounts that, for each*
114 *class of vehicle, shall be based on the distance traveled by the vehicle on the roadway; and*

115 2. *Lease land and other property under the operator's control for the purpose of installation of*
116 *outdoor advertising structures and displays of outdoor advertising, subject to such terms and conditions*
117 *as the operator and the lessee shall mutually agree, provided that neither (i) the provisions of Chapter 7*
118 *of Title 33.1 (§ 33.1-351 et seq.) nor (ii) any local ordinance otherwise applicable to the land and other*
119 *property under control of the operator shall be applicable to any outdoor advertising structure or*
120 *display of outdoor advertising installed or displayed pursuant to such lease; and*

3. With the consent of the Department, make and enforce reasonable regulations, including regulations:

- a. Which set maximum and minimum speeds that shall conform to Department and state practices;
- b. Which exclude undesirable vehicles or cargoes or materials from the use of the roadway; or
- c. Which establish commuter lanes for use during all or any part of a day and limit the use of such lanes to certain traffic.

3. The enumeration of powers in this subsection shall not limit the power of the operator to do anything it deems necessary and appropriate in the operation of the roadway, provided that the practice is reasonable and nondiscriminatory. The powers granted to the operator in this subsection shall not be deemed to limit the authority of the Commission to regulate the operator under this title.

B. The operator shall have the following duties:

1. It shall file and maintain at all times with the Commission an accurate schedule of rates charged to the public for use of all or any portion of the roadway and it shall also file and maintain a statement that such rates will apply uniformly to all users within any such reasonable classification as the operator may elect to implement. These rates shall be neither applied nor collected in a discriminatory fashion, and free vehicular passage shall be permitted to those persons referred to in subsection A of § 33.1-252.

2. It shall construct and maintain the roadway for anticipated use according to appropriate standards of the Department for public highways operated and maintained by the Department, and enlarge or expand the road when unsatisfied demand for use of the roadway makes it economically feasible to do so. The operator shall agree with the Department for inspection of construction work by the Department at appropriate times during any construction or enlargement. In addition, it shall cooperate fully with the Department in establishing any interconnection with the roadway that the Department may make.

3. It shall contract with the Commonwealth for enforcement of the traffic and public safety laws by state authorities, and may similarly contract with appropriate local authorities for those portions of the roadway within the local jurisdiction.