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HOUSE BILL NO. 1690

Offered January 9, 2013

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A *BILL to amend and reenact §§ 56-557 and 56-559 of the Code of Virginia, relating to the Public-Private Transportation Act; definition of transportation facility and public entity; port facility excluded.*

 Patron—Jones

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:**1. That §§ 56-557 and 56-559 of the Code of Virginia are amended and reenacted as follows:****§ 56-557. 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 transportation facility is located and any other responsible public entity directly affected by the qualifying transportation facility.

"Asset management" means a systematic process of operating and maintaining the state system of highways by combining engineering practices and analyses with sound business practices and economic theory to achieve cost-effective outcomes.

"Commission" means the State Corporation Commission.

"Comprehensive agreement" means the comprehensive agreement between the private entity and the responsible public entity required by § 56-566 of this chapter.

"Concession" means any lease, license, franchise, easement, or other binding agreement transferring rights for the use or control, in whole or in part, of a qualifying transportation facility by a responsible public entity to a private entity for a definite term during which the private entity will provide transportation-related services including, but not limited to, operations and maintenance, revenue collection, toll-collection enforcement, design, construction, and other activities that enhance throughput, reduce congestion, or otherwise manage the facility in return for the right to receive all or a portion of the revenues of the qualifying transportation facility.

"Concession payment" means a payment from a private entity to a responsible public entity in connection with the development and/or operation of a qualifying transportation facility pursuant to a concession.

"Develop" or "development" means to plan, design, develop, finance, lease, acquire, install, construct, or expand.

"Interim agreement" means an agreement, including a memorandum of understanding or binding preliminary agreement, between the private entity and the responsible public entity that provides for completion of studies and any other activities to advance the development and/or operation of a qualifying transportation facility.

"Maintenance" means that term as defined in § 33.1-23.02.

"Material default" means any default by the private entity in the performance of its duties under subsection E of § 56-565 of this chapter that jeopardizes adequate service to the public from a qualifying transportation facility and remains unremedied after the responsible public entity has provided notice to the private entity and a reasonable cure period has elapsed.

"Multimodal transportation facility" means a transportation facility consisting of multiple modes of transportation.

"Operate" or "operation" 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 any of the foregoing, but shall not include any public service company or the Virginia Port Authority.

"Qualifying transportation facility" means one or more transportation facilities developed and/or operated by a private entity pursuant to this chapter.

"Responsible public entity" means a public entity, including local governments and regional authorities, that has the power to develop and/or operate the qualifying transportation facility.

"Responsible public entity" shall not include the Virginia Port Authority.

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59 "Revenues" means all revenues, including, but not limited to, income, earnings, user fees, lease
60 payments, allocations, federal, state, regional, and local appropriations or the appropriations or other
61 funds available to any political subdivision, authority, or instrumentality thereof, bond proceeds, equity
62 investments, and/or service payments arising out of or in connection with supporting the development
63 and/or operation of a qualifying transportation facility, including without limitation, money received as
64 grants or otherwise from the United States of America, from any public entity, or from any agency or
65 instrumentality of the foregoing in aid of such facility.

66 "Service contract" means a contract entered into between a public entity and the private entity
67 pursuant to § 56-561 of this chapter.

68 "Service payments" means payments to the private entity in connection with the development and/or
69 operation of a qualifying transportation facility pursuant to a service contract.

70 "State" means the Commonwealth of Virginia.

71 "Transportation facility" means any road, bridge, tunnel, overpass, ferry, airport, mass transit facility,
72 vehicle parking facility, ~~port facility~~ or similar commercial facility used for the transportation of persons
73 or goods, together with any buildings, structures, parking areas, appurtenances, and other property
74 needed to operate such facility; however, *transportation facility shall not include (i) a commercial or*
75 *retail use or enterprise not essential to the transportation of persons or goods shall not be a*
76 *"transportation facility," or (ii) a port facility as defined in § 62.1-140.*

77 "User fees" mean the rates, tolls, fees, or other charges imposed by the private entity for use of all or
78 a portion of a qualifying transportation facility pursuant to the interim or comprehensive agreement.

79 **§ 56-559. Prerequisite for operation.**

80 A. Any private entity seeking authorization under this chapter to develop and/or operate a
81 transportation facility shall first obtain approval of the responsible public entity under § 56-560. Such
82 private entity may initiate the approval process by requesting approval pursuant to subsection A of
83 § 56-560 or the responsible public entity may request proposals pursuant to subsection B of § 56-560.

84 B. ~~Any responsible public entity that is an agency or institution of the Commonwealth receiving a~~
85 ~~detailed proposal from a private entity for a qualifying transportation facility that is a port facility as~~
86 ~~defined in § 62.1-140 shall provide notice of the receipt of such proposal to the Public-Private~~
87 ~~Partnership Advisory Commission established in § 30-279.~~

88 **2. That the provisions of this act shall not apply to any interim or comprehensive agreement**
89 **entered into before July 1, 2013 by the Virginia Port Authority under the Public-Private**
90 **Transportation Act.**