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HOUSE BILL NO. 741

Offered January 11, 2012

Prefiled January 11, 2012

A BILL to amend and reenact §§ 30-278, 30-279, and 56-573.1:1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 30-280.1, relating to the Public-Private Partnership Advisory Commission; powers.

Patron—Jones

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 30-278, 30-279, and 56-573.1:1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 30-280.1 as follows:

§ 30-278. Definitions.

As used in this chapter:

"Commission" means the Public-Private Partnership Advisory Commission.

"Comprehensive agreement" means the same as the term is defined in the *Public-Private Transportation Act of 1995* (§ 56-556 *et seq.*) or in the *Public-Private Education Facilities and Infrastructure Act of 2002* (§ 56-575.1 *et seq.*).

"Detailed proposal" means a proposal accepted by a responsible public entity beyond a conceptual level of review and at which time issues such as fixing costs, payment schedules, financing, deliverables, and project schedule are defined.

"Interim agreement" means the same as the term is defined in the *Public-Private Transportation Act of 1995* (§ 56-556 *et seq.*) or in the *Public-Private Education Facilities and Infrastructure Act of 2002*.

"Qualifying project" means the same as that term is defined in the *Public-Private Education Facilities and Infrastructure Act of 2002*.

"Qualifying transportation facility" means the same as that term is defined in the *Public-Private Transportation Act of 1995* (§ 56-556 *et seq.*).

"Responsible public entity" means a public entity that is an agency or institution of the Commonwealth and that has the power to develop or operate a qualifying project or a qualifying transportation facility.

§ 30-279. Public-Private Partnership Advisory Commission established; membership; terms; compensation; staff; quorum.

A. The Public-Private Partnership Advisory Commission (the Commission) is established as an advisory commission in the legislative branch. The purpose of the Commission shall be to advise responsible public entities that are agencies or institutions of the Commonwealth on proposals received pursuant to the *Public-Private Transportation Act of 1995* (§ 56-556 *et seq.*) and the *Public-Private Education Facilities and Infrastructure Act of 2002* (§ 56-575.1 *et seq.*).

B. The Commission shall consist of 11 members, including eight legislative members, as follows: (i) the Chair of the House Committee on Appropriations or his designee and four members of the House of Delegates appointed by the Speaker of the House, (ii) the Chair of the Senate Committee on Finance or his designee and two members of the Senate appointed by the Senate Committee on Rules, and (iii) the Secretary of Administration, the Secretary of Finance, and the Secretary of Technology or their designees. Legislative members shall serve on the Commission until the expiration of their terms of office or until their successors shall qualify. Executive branch agency members shall serve only as long as they retain their positions.

C. The members of the Commission shall elect from among the legislative membership a chairman and a vice-chairman who shall serve for two-year terms. The Commission shall hold meetings quarterly or upon the call of the chairman. A majority of the Commission shall constitute a quorum.

D. Members of the Commission shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813, 2.2-2825, and 30-19.12, as appropriate.

E. Administrative staff support shall be provided by the Office of the Clerk of the Senate or the Office of the Clerk of the House of Delegates as may be appropriate for the house in which the chairman of the Commission serves. The Division of Legislative Services shall provide legal, research, and policy analysis services to the Commission. Technical assistance shall be provided by the staffs of the House Committee on Appropriations and the Senate Finance Committee and the Auditor of Public Accounts. Additional assistance as needed shall be provided by the Department of General Services.

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59 F. A copy of the proceedings of the Commission shall be filed with the Division of Legislative
60 Services.

61 § 30-280.1. *Review of interim and comprehensive agreements for qualifying transportation facilities*
62 *prior to execution.*

63 A. *Each responsible public entity receiving detailed proposals from private entities for a qualifying*
64 *transportation project shall provide copies of such proposals to the Chairman of the Commission, the*
65 *chairmen of the House Committee on Appropriations, House Committee on Finance, and Senate*
66 *Committee on Finance or their designees, and the Director of the Department of General Services prior*
67 *to entering into the negotiation of an interim or comprehensive agreement.*

68 B. *The following qualifying transportation projects shall not be subject to review by the Commission:*

69 1. *Any proposed qualifying transportation facility with a total cost of less than \$3 million.*

70 2. *Any proposed qualifying transportation facility with a total cost of more than \$3 million but less*
71 *than \$50 million for which funds have been specifically appropriated as a public-private partnership in*
72 *the general appropriation act, provided such project does not increase in size more than five percent*
73 *beyond the plans and justifications that were the basis of the appropriation. For any qualifying*
74 *transportation facility that will be completed in phases and for which no appropriation has been made*
75 *for phases other than the current phase of the project, the Commission may undertake additional*
76 *reviews of such projects.*

77 C. *Within 10 days of receipt of a complete copy of the detailed proposals for a qualifying*
78 *transportation facility, the Commission shall determine whether to accept or decline such proposals for*
79 *review and notify the responsible public entity of its decision. If the Commission accepts a proposal for*
80 *review, the findings and recommendations of the Commission shall be provided to the responsible public*
81 *entity within 45 days of receiving complete copies of the detailed proposals. If no findings or*
82 *recommendations are provided by the Commission to the responsible public entity within the 45-day*
83 *period, the Commission shall be deemed to have no findings or recommendations. Upon acceptance for*
84 *review, the responsible public entity shall provide any additional information regarding the qualifying*
85 *transportation facility upon the request of the Commission, provided such information is available to or*
86 *can be obtained by the responsible public entity.*

87 D. *The Commission shall review accepted detailed proposals and provide findings and*
88 *recommendations to the responsible public entity, including (i) whether the terms and conditions of the*
89 *proposals and proposed qualifying project create state tax-supported debt, taking into consideration the*
90 *specific findings of the Secretary of Finance with respect to such recommendations, (ii) an analysis of*
91 *the potential financial impact of the qualifying transportation facility, (iii) a review of the policy aspects*
92 *of the detailed proposals and the qualifying transportation facility, and (iv) proposed general business*
93 *terms and conditions. Review by the Commission shall not be construed to constitute approval of any*
94 *appropriations necessary to implement any subsequent interim or comprehensive agreement.*

95 E. *The responsible public entity shall not commence negotiation of an interim or comprehensive*
96 *agreement until the Commission has submitted its recommendations or declined to accept the detailed*
97 *proposals for review.*

98 F. *The responsible public entity shall submit a copy of the proposed interim or comprehensive*
99 *agreement to the Commission, the chairmen of the House Committee on Appropriations, House*
100 *Committee on Finance, and Senate Committee on Finance or their designees, and the Director of the*
101 *Department of General Services at least 30 days prior to execution of the agreement along with a report*
102 *describing the extent to which the Commission's recommendations were addressed in the proposed*
103 *interim or comprehensive agreement.*

104 § 56-573.1:1. *Posting of conceptual proposals; public comment; public access to procurement records.*

105 A. *Conceptual proposals submitted in accordance with subsection A or B of § 56-560 to a*
106 *responsible public entity shall be posted by the responsible public entity within 10 working days after*
107 *acceptance of such proposals as follows:*

108 1. *For responsible public entities that are state agencies, authorities, departments, institutions, and*
109 *other units of state government, posting shall be on the Department of General Services' central*
110 *electronic procurement website; and*

111 2. *For responsible public entities that are local public bodies, posting shall be on the responsible*
112 *public entity's website or on the Department of General Services' central electronic procurement website.*
113 *In addition, such public bodies may publish in a newspaper of general circulation in the area in which*
114 *the contract is to be performed a summary of the proposals and the location where copies of the*
115 *proposals are available for public inspection. Such local public bodies are encouraged to utilize the*
116 *Department of General Services' central electronic procurement website to provide the public with*
117 *centralized visibility and access to the Commonwealth's procurement opportunities.*

118 In addition to the posting requirements, at least one copy of the proposals shall be made available for
119 public inspection. Nothing in this section shall be construed to prohibit the posting of the conceptual
120 proposals by additional means deemed appropriate by the responsible public entity so as to provide

121 maximum notice to the public of the opportunity to inspect the proposals. Trade secrets, financial
122 records, or other records of the private entity excluded from disclosure under the provisions of
123 subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the
124 responsible public entity and the private entity.

125 B. In addition to the posting requirements of subsection A, for 30 days prior to entering into an
126 interim or comprehensive agreement, a responsible public entity shall provide an opportunity for public
127 comment on the proposals. The public comment period required by this subsection may include a public
128 hearing in the sole discretion of the responsible public entity. After the end of the public comment
129 period, no additional posting shall be required. *The responsible public entity shall hold a public hearing*
130 *on the proposals during the proposal review process, but not later than 30 days prior to entering into*
131 *an interim or comprehensive agreement.*

132 C. Once the negotiation phase for the development of an interim or a comprehensive agreement is
133 complete and a decision to award has been made by a responsible public entity, the responsible public
134 entity shall present the major business points of the interim or comprehensive agreement, including the
135 use of any public funds, to its oversight board at a regularly scheduled meeting of the board that is open
136 to the public.

137 D. Once an interim agreement or a comprehensive agreement has been entered into, a responsible
138 public entity shall make procurement records available for public inspection, in accordance with the
139 Virginia Freedom of Information Act (§ 2.2-3700 et seq.). For the purposes of this subsection,
140 procurement records shall not be interpreted to include (i) trade secrets of the private entity as defined in
141 the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial records, including balance sheets or
142 financial statements of the private entity that are not generally available to the public through regulatory
143 disclosure or otherwise.

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

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

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