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HOUSE BILL NO. 978

Offered January 8, 2014

Prefiled January 8, 2014

A BILL to amend and reenact §§ 56-557 and 56-575.1 of the Code of Virginia, relating to the definition of public utility.

 Patron—Rust

 Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That §§ 56-557 and 56-575.1 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.

"Public utility" means any entity, whether cooperative, private, or public, including any locality as defined in § 1-221 and any political subdivision, that owns or operates lines or other facilities within the Commonwealth for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, sewage or waste, storm water not connected with highway drainage, or any other similar commodity, which directly or indirectly serves the public.

"Qualifying transportation facility" means one or more transportation facilities developed and/or

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59 operated by a private entity pursuant to this chapter.

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

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

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

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

73 "State" means the Commonwealth of Virginia.

74 "Transportation facility" means any road, bridge, tunnel, overpass, ferry, airport, mass transit facility,
75 vehicle parking facility, port facility or similar commercial facility used for the transportation of persons
76 or goods, together with any buildings, structures, parking areas, appurtenances, and other property
77 needed to operate such facility; however, a commercial or retail use or enterprise not essential to the
78 transportation of persons or goods shall not be a "transportation facility."

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

81 **§ 56-575.1. Definitions.**

82 As used in this chapter, unless the context requires a different meaning:

83 "Affected jurisdiction" means any county, city or town in which all or a portion of a qualifying
84 project is located.

85 "Appropriating body" means the body responsible for appropriating or authorizing funding to pay for
86 a qualifying project.

87 "Commission" means the State Corporation Commission.

88 "Comprehensive agreement" means the comprehensive agreement between the private entity and the
89 responsible public entity required by § 56-575.9.

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

92 "Interim agreement" means an agreement between a private entity and a responsible public entity that
93 provides for phasing of the development or operation, or both, of a qualifying project. Such phases may
94 include, but are not limited to, design, planning, engineering, environmental analysis and mitigation,
95 financial and revenue analysis, or any other phase of the project that constitutes activity on any part of
96 the qualifying project.

97 "Lease payment" means any form of payment, including a land lease, by a public entity to the
98 private entity for the use of a qualifying project.

99 "Material default" means any default by the private entity in the performance of its duties under
100 subsection E of § 56-575.8 that jeopardizes adequate service to the public from a qualifying project.

101 "Operate" means to finance, maintain, improve, equip, modify, repair, or operate.

102 "Private entity" means any natural person, corporation, general partnership, limited liability company,
103 limited partnership, joint venture, business trust, public benefit corporation, non-profit entity, or other
104 business entity.

105 "Public entity" means the Commonwealth and any agency or authority thereof, any county, city or
106 town and any other political subdivision of the Commonwealth, any public body politic and corporate,
107 or any regional entity that serves a public purpose.

108 "Public utility" means any entity, whether cooperative, private, or public, including any locality as
109 defined in § 1-221 and any political subdivision, that owns or operates lines or other facilities within the
110 Commonwealth for producing, transmitting, or distributing communications, power, electricity, light,
111 heat, gas, oil, crude products, water, steam, sewage or waste, storm water not connected with highway
112 drainage, or any other similar commodity, which directly or indirectly serves the public.

113 "Qualifying project" means (i) any education facility, including, but not limited to a school building,
114 any functionally related and subordinate facility and land to a school building (including any stadium or
115 other facility primarily used for school events), and any depreciable property provided for use in a
116 school facility that is operated as part of the public school system or as an institution of higher
117 education; (ii) any building or facility that meets a public purpose and is developed or operated by or
118 for any public entity; (iii) any improvements, together with equipment, necessary to enhance public
119 safety and security of buildings to be principally used by a public entity; (iv) utility and
120 telecommunications and other communications infrastructure; (v) a recreational facility; (vi) technology

121 infrastructure, services, and applications, including, but not limited to, telecommunications, automated
122 data processing, word processing and management information systems, and related information,
123 equipment, goods and services; (vii) any services designed to increase the productivity or efficiency of
124 the responsible public entity through the use of technology or other means, (viii) any technology,
125 equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or
126 residential areas; (ix) any improvements necessary or desirable to any unimproved locally- or
127 state-owned real estate; or (x) any solid waste management facility as defined in § 10.1-1400 that
128 produces electric energy derived from solid waste.

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

131 "Revenues" means all revenues, income, earnings, user fees, lease payments, or other service
132 payments arising out of or in connection with supporting the development or operation of a qualifying
133 project, including without limitation, money received as grants or otherwise from the United States of
134 America, from any public entity, or from any agency or instrumentality of the foregoing in aid of such
135 facility.

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

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

140 "State" means the Commonwealth of Virginia.

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

144 **2. That an emergency exists and this act is in force from its passage.**