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HOUSE BILL NO. 1070

Offered January 10, 2018

Prefiled January 10, 2018

A BILL to amend and reenact §§ 33.2-1803, 33.2-1805, 56-575.4, and 56-575.6 of the Code of Virginia, relating to the Public-Private Transportation Act of 1995; Public-Private Education Facilities and Infrastructure Act of 2002; affected local jurisdictions and public entities; economic impact analysis.

Patrons—Heretick, Convirs-Fowler, Jones, J.C., Levine and Ward

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.2-1803, 33.2-1805, 56-575.4, and 56-575.6 of the Code of Virginia are amended and reenacted as follows:

§ 33.2-1803. Approval by the responsible public entity.

A. The private entity may request approval by the responsible public entity to develop and/or operate as a qualifying transportation facility. Any such request shall be accompanied by the following material and information unless waived by the responsible public entity in its guidelines or other instructions given, in writing, to the private entity with respect to the transportation facility or facilities that the private entity proposes to develop and/or operate as a qualifying transportation facility:

1. A topographic map (1:2,000 or other appropriate scale) indicating the location of the transportation facility or facilities;

2. A description of the transportation facility or facilities, including the conceptual design of such facility or facilities and all proposed interconnections with other transportation facilities;

3. The proposed date for development and/or operation of the transportation facility or facilities along with an estimate of the life-cycle cost of the transportation facility as proposed;

4. A statement setting forth the method by which the private entity proposes to secure any property interests required for the transportation facility or facilities;

5. Information relating to the current transportation plans, if any, of each affected locality or public entity;

6. A list of all permits and approvals required for developing and/or operating improvements to the transportation facility or facilities from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;

7. A list of public utility's, locality's, or political subdivision's facilities, if any, that will be crossed by the transportation facility or facilities and a statement of the plans of the private entity to accommodate such crossings;

8. A statement setting forth the private entity's general plans for developing and/or operating the transportation facility or facilities, including identification of any revenue, public or private, or proposed debt or equity investment or concession proposed by the private entity;

9. The names and addresses of the persons who may be contacted for further information concerning the request;

10. Information on how the private entity's proposal will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, enhancing economic efficiency, or any combination thereof;

11. A statement of the risks, liabilities, and responsibilities to be transferred, assigned, or assumed by the private entity for the development and/or operation of the transportation facility, including revenue risk and operations and maintenance; and

12. An economic impact analysis identifying any potentially adverse economic or revenue impacts that a potential comprehensive agreement may have on all affected localities or public entities: and

13. Such additional material and information as the responsible public entity may reasonably request pursuant to its guidelines or other written instructions.

With the exception of subdivision 12, the material and information required by this subsection may be waived by the responsible public entity in its guidelines or other instructions given, in writing, to the private entity with respect to the transportation facility or facilities that the private entity proposes to develop and/or operate as a qualifying transportation facility.

B. The responsible public entity may request proposals from private entities for the development and/or operation of transportation facilities subject to the following:

1. For transportation facilities where the Department of Transportation or the Department of Rail and Public Transportation is the responsible public entity, the Transportation Public-Private Partnership

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59 Steering Committee established pursuant to § 33.2-1803.2 has determined that moving forward with the
60 development and/or operation of the facility pursuant to this article serves the best interest of the public.

61 2. A finding of public interest pursuant to § 33.2-1803.1 has been issued by the responsible public
62 entity.

63 3. The responsible public entity shall not charge a fee to cover the costs of processing, reviewing,
64 and evaluating proposals received in response to such requests.

65 C. The responsible public entity may grant approval of the development and/or operation of the
66 transportation facility or facilities as a qualifying transportation facility if the responsible public entity
67 determines that it is in the best interest of the public. The responsible public entity may determine that
68 the development and/or operation of the transportation facility or facilities as a qualifying transportation
69 facility serves the best interest of the public if:

70 1. The private entity can develop and/or operate the transportation facility or facilities with a public
71 contribution amount that is less than the maximum public contribution determined pursuant to subsection
72 A of § 33.2-1803.1:1 for transportation facilities where the Department of Transportation or the
73 Department of Rail and Public Transportation is the responsible public entity;

74 2. There is a public need for the transportation facility or facilities the private entity proposes to
75 develop and/or operate as a qualifying transportation facility and for transportation facilities where the
76 Department of Transportation or the Department of Rail and Public Transportation is the responsible
77 public entity, such facility or facilities meet a need included in the plan developed pursuant to
78 § 33.2-353;

79 3. The plan for the development and/or operation of the transportation facility or facilities is
80 anticipated to have significant benefits as determined pursuant to subdivision B 1 of § 33.2-1803.1;

81 4. The private entity's plans will result in the timely development and/or operation of the
82 transportation facility or facilities or their more efficient operation; and

83 5. The risks, liabilities, and responsibilities transferred, assigned, or assumed by the private entity
84 provide sufficient benefits to the public to not proceed with the development and/or operation of the
85 transportation facility through other means of procurement available to the responsible public entity.

86 In evaluating any request, the responsible public entity may rely upon internal staff reports prepared
87 by personnel familiar with the operation of similar facilities or the advice of outside advisors or
88 consultants having relevant experience.

89 D. The responsible public entity shall not enter into a comprehensive agreement unless the chief
90 executive officer of the responsible public entity certifies in writing to the Governor and the General
91 Assembly that:

92 1. The finding of public interest issued pursuant to § 33.2-1803.1 is still valid;

93 2. The transfer, assignment, and assumption of risks, liabilities, and permitting responsibilities and
94 the mitigation of revenue risk by the private sector have not materially changed since the finding of
95 public interest was issued pursuant to § 33.2-1803.1; and

96 3. The public contribution requested by the private entity does not exceed the maximum public
97 contribution determined pursuant to subsection A of § 33.2-1803.1:1.

98 Changes to the project scope that do not impact the assignment of risks or liabilities or the mitigation
99 of revenue risk shall not be considered material changes to the finding of public interest, provided that
100 such changes were presented in a public meeting to the Commonwealth Transportation Board, other state
101 board, or the governing body of a locality, as appropriate.

102 E. The responsible public entity may charge a reasonable fee to cover the costs of processing,
103 reviewing, and evaluating the request submitted by a private entity pursuant to subsection A, including
104 reasonable attorney fees and fees for financial and other necessary advisors or consultants. The
105 responsible public entity shall also develop guidelines that establish the process for the acceptance and
106 review of a proposal from a private entity pursuant to subsections A, B, C, and D. Such guidelines shall
107 establish a specific schedule for review of the proposal by the responsible public entity, a process for
108 alteration of that schedule by the responsible public entity if it deems that changes are necessary because
109 of the scope or complexity of proposals it receives, the process for receipt and review of competing
110 proposals, and the type and amount of information that is necessary for adequate review of proposals in
111 each stage of review. For qualifying transportation facilities that have approved or pending state and
112 federal environmental clearances, have secured significant right-of-way, have previously allocated
113 significant state or federal funding, or exhibit other circumstances that could reasonably reduce the
114 amount of time to develop and/or operate the qualifying transportation facility in accordance with the
115 purpose of this chapter, the guidelines shall provide for a prioritized documentation, review, and
116 selection process.

117 F. The approval of the responsible public entity shall be subject to the private entity's entering into
118 an interim agreement or a comprehensive agreement with the responsible public entity. For any project
119 with an estimated construction cost of over \$50 million, the responsible public entity also shall require
120 the private entity to pay the costs for an independent audit of any and all traffic and cost estimates

121 associated with the private entity's proposal, as well as a review of all public costs and potential
122 liabilities to which taxpayers could be exposed (including improvements to other transportation facilities
123 that may be needed as a result of the proposal, failure by the private entity to reimburse the responsible
124 public entity for services provided, and potential risk and liability in the event the private entity defaults
125 on the comprehensive agreement or on bonds issued for the project). This independent audit shall be
126 conducted by an independent consultant selected by the responsible public entity, and all such
127 information from such review shall be fully disclosed.

128 G. In connection with its approval of the development and/or operation of the transportation facility
129 or facilities as a qualifying transportation facility, the responsible public entity shall establish a date for
130 the acquisition of or the beginning of construction of or improvements to the qualifying transportation
131 facility. The responsible public entity may extend such date.

132 H. The responsible public entity shall take appropriate action, as more specifically set forth in its
133 guidelines, to protect confidential and proprietary information provided by the private entity pursuant to
134 an agreement under subdivision 11 of § 2.2-3705.6.

135 I. The responsible public entity may also apply for, execute, and/or endorse applications submitted by
136 private entities to obtain federal credit assistance for qualifying projects developed and/or operated
137 pursuant to this chapter.

138 **§ 33.2-1805. Affected localities or public entities.**

139 A. Any private entity requesting approval from, or submitting a proposal to, a responsible public
140 entity under § 33.2-1803 shall notify each affected locality or public entity by furnishing a copy of its
141 request or proposal to each affected locality or public entity.

142 B. Each affected locality or public entity that is not a responsible public entity for the respective
143 qualifying transportation facility shall, within 60 days after receiving a request for comments from the
144 responsible public entity, submit in writing any comments it may have on the proposed qualifying
145 transportation facility to the responsible public entity and indicate whether the facility will address the
146 needs identified in the appropriate state, regional, or local transportation plan by improving safety,
147 reducing congestion, increasing capacity, enhancing economic efficiency, or any combination thereof. *In*
148 *addition, if the economic impact analysis provided pursuant to subdivision A 12 of § 33.2-1803 includes*
149 *a determination that an affected local jurisdiction may have adverse economic or revenue impacts by*
150 *virtue of a prospective comprehensive agreement, such affected localities or public entities shall be*
151 *given reasonable opportunity to consult with the parties concerning the nature and scope of the impacts*
152 *and regarding measures that may be taken to avoid or mitigate the impacts or make the agreement*
153 *revenue-neutral.*

154 C. *The comments and consultations provided by affected localities or public entities shall be given*
155 *consideration by the responsible public entity prior to entering a comprehensive agreement. Each*
156 *responsible public entity shall certify in writing its compliance with the requirements of this section.*

157 D. Any qualifying transportation facility, title or easement to which is held by the Commonwealth or
158 an agency or authority therefor and the rights to develop or operate which have been granted to the
159 private entity through a concession as defined in § 33.2-1800, shall be subject to the provisions of Title
160 15.2 in the same manner as a facility of the Commonwealth, mutatis mutandis, except that such private
161 entity shall comply with the provisions of subsections B and C of § 15.2-2202 as they relate to the
162 affected locality's or public entity's comprehensive plan.

163 **§ 56-575.4. Approval of qualifying projects by the responsible public entity.**

164 A. A private entity may request approval of a qualifying project by the responsible public entity.
165 Any such request shall be accompanied by the following material and information ~~unless waived by the~~
166 ~~responsible public entity:~~

167 1. A topographic map (1:2,000 or other appropriate scale) indicating the location of the qualifying
168 project;

169 2. A description of the qualifying project, including the conceptual design of such facility or facilities
170 or a conceptual plan for the provision of services or technology infrastructure, and a schedule for the
171 initiation of and completion of the qualifying project to include the proposed major responsibilities and
172 timeline for activities to be performed by both the public and private entity;

173 3. A statement setting forth the method by which the private entity proposes to secure necessary
174 property interests required for the qualifying project;

175 4. Information relating to the current plans for development of facilities or technology infrastructure
176 to be used by a public entity that are similar to the qualifying project being proposed by the private
177 entity, if any, of each affected local jurisdiction;

178 5. A list of all permits and approvals required for the qualifying project from local, state, or federal
179 agencies and a projected schedule for obtaining such permits and approvals;

180 6. A list of public utility facilities, if any, that will be crossed by the qualifying project and a
181 statement of the plans of the private entity to accommodate such crossings;

182 7. A statement setting forth the private entity's general plans for financing the qualifying project
183 including the sources of the private entity's funds and identification of any dedicated revenue source or
184 proposed debt or equity investment on the behalf of the private entity;

185 8. The names and addresses of the persons who may be contacted for further information concerning
186 the request;

187 9. User fees, lease payments, and other service payments over the term of the interim or
188 comprehensive agreement pursuant to § 56-575.9 or 56-575.9:1 and the methodology and circumstances
189 for changes to such user fees, lease payments, and other service payments over time; ~~and~~

190 10. *An economic impact analysis identifying any potentially adverse economic or revenue impacts*
191 *that a potential comprehensive agreement may have on all affected local jurisdictions; and*

192 11. Such additional material and information as the responsible public entity may reasonably request.
193 *With the exception of subdivision 10, the material and information required by this subsection may*
194 *be waived by the responsible public entity.*

195 B. The responsible public entity may request proposals or invite bids from private entities for the
196 development or operation of qualifying projects.

197 C. The responsible public entity may grant approval of the development or operation of the education
198 facility, technology infrastructure or other public infrastructure or government facility needed by a public
199 entity as a qualifying project, or the design or equipping of a qualifying project so developed or
200 operated, if the responsible public entity determines that the project serves the public purpose of this
201 chapter. The responsible public entity may determine that the development or operation of the qualifying
202 project as a qualifying project serves such public purpose if:

203 1. There is a public need for or benefit derived from the qualifying project of the type the private
204 entity proposes as a qualifying project;

205 2. The estimated cost of the qualifying project is reasonable in relation to similar facilities; and

206 3. The private entity's plans will result in the timely development or operation of the qualifying
207 project.

208 In evaluating any request, the responsible public entity may rely upon internal staff reports prepared
209 by personnel familiar with the operation of similar facilities or the advice of outside advisors or
210 consultants having relevant experience.

211 D. The responsible public entity may charge a reasonable fee to cover the costs of processing,
212 reviewing and evaluating the request, including without limitation, reasonable attorney's fees and fees for
213 financial, technical, and other necessary advisors or consultants.

214 E. The approval of the responsible public entity shall be subject to the private entity's entering into
215 an interim or comprehensive agreement pursuant to § 56-575.9 with the responsible public entity.

216 F. In connection with its approval of the qualifying project, the responsible public entity shall
217 establish a date for the commencement of activities related to the qualifying project. The responsible
218 public entity may extend such date from time to time.

219 G. The responsible public entity shall take appropriate action to protect confidential and proprietary
220 information provided by the private entity pursuant to an agreement under subdivision 11 of
221 § 2.2-3705.6.

222 H. Nothing in this chapter or in an interim or comprehensive agreement entered into pursuant to this
223 chapter shall be deemed to enlarge, diminish or affect the authority, if any, otherwise possessed by the
224 responsible public entity to take action that would impact the debt capacity of the Commonwealth.

225 I. Prior to entering into the negotiation of an interim or comprehensive agreement, each responsible
226 public entity that is an agency or institution of the Commonwealth shall submit copies of detailed
227 proposals to the Public-Private Partnership Advisory Commission as provided by Chapter 42 (§ 30-278
228 et seq.) of Title 30.

229 J. Any proposed comprehensive agreement for a qualifying project where the responsible public
230 entity is an agency or institution of the Commonwealth that (i) creates state tax-supported debt, (ii)
231 requires a level of appropriation significantly beyond the appropriation received by the responsible
232 public entity in the most recent appropriation act, or (iii) significantly alters the Commonwealth's
233 discretion to change the level of services or the funding for such services over time, shall be reviewed
234 by the appropriating body prior to execution.

235 **§ 56-575.6. Affected local jurisdictions.**

236 A. Any private entity requesting approval from, or submitting a proposal to, a responsible public
237 entity under § 56-575.4 shall notify each affected local jurisdiction by furnishing a copy of its request or
238 proposal to each affected local jurisdiction.

239 B. Each affected local jurisdiction that is not a responsible public entity for the respective qualifying
240 project shall, within ~~sixty~~ 60 days after receiving such notice, submit any comments it may have in
241 writing on the proposed qualifying project to the responsible public entity and indicate whether the
242 facility is compatible with the local comprehensive plan, local infrastructure development plans, the
243 capital improvements budget, or other government spending plan. ~~Such~~ *In addition, if the economic*

244 *impact analysis provided pursuant to subdivision A 10 of § 56-575.4 includes a determination that an*
245 *affected local jurisdiction may have adverse economic or revenue impacts by virtue of a prospective*
246 *comprehensive agreement, such affected local jurisdictions shall be given reasonable opportunity to*
247 *consult with the parties concerning the nature and scope of the impacts and regarding measures that*
248 *may be taken to avoid or mitigate the impacts or make the agreement revenue-neutral.*
249 *C. The comments and consultants provided by affected local jurisdictions shall be given*
250 *consideration by the responsible public entity prior to entering a comprehensive agreement pursuant to*
251 *§ 56-575.9 with a private entity. Each responsible public entity shall certify in writing its compliance*
252 *with the requirements of this section.*

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