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HOUSE BILL NO. 1243

Offered January 8, 2020

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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 Public-Private Transportation Act of 1995; Public Private Education Facilities and Infrastructure Act of 2002; affected local jurisdictions and public entities; consideration of economic impact.

Patrons—Heretick, Murphy, Rasoul and Samirah; Senator: Morrissey

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 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 each affected locality 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 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

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59 Public Transportation is the responsible public entity, the Transportation Public-Private Partnership
60 Steering Committee established pursuant to § 33.2-1803.2 has determined that moving forward with the
61 development and/or operation of the facility pursuant to this article serves the best interest of the public.

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

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

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

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

75 2. There is a public need for the transportation facility or facilities the private entity proposes to
76 develop and/or operate as a qualifying transportation facility and for transportation facilities where the
77 Department of Transportation or the Department of Rail and Public Transportation is the responsible
78 public entity, such facility or facilities meet a need included in the plan developed pursuant to
79 § 33.2-353;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 33.2-1805. Affected localities or public entities.

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

B. Each affected locality or public entity that is not a responsible public entity for the respective qualifying transportation facility shall, within 60 days after receiving a request for comments from the responsible public entity, submit in writing any comments it may have on the proposed qualifying transportation facility to the responsible public entity and indicate whether the facility 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. *In addition, if the economic impact analysis provided pursuant to subdivision A 12 of § 33.2-1803 includes a determination that an affected local jurisdiction may have adverse economic or revenue impacts by virtue of a prospective comprehensive agreement, such affected localities or public entities shall be given reasonable opportunity to consult with the parties concerning the nature and scope of the impacts and regarding measures that may be taken to avoid or mitigate the impacts or make the agreement revenue-neutral.*

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

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

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

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

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

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

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

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

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

6. A list of public utility facilities, if any, that will be crossed by the qualifying project and a

statement of the plans of the private entity to accommodate such crossings;

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

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

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

10. An economic impact analysis identifying any potentially adverse economic or revenue impacts that a potential comprehensive agreement may have on each affected local jurisdiction; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 56-575.6. Affected local jurisdictions.

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

B. Each affected local jurisdiction that is not a responsible public entity for the respective qualifying project shall, within sixty days after receiving such notice, submit any comments it may have in writing on the proposed qualifying project to the responsible public entity and indicate whether the facility is compatible with the local comprehensive plan, local infrastructure development plans, the capital

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