

LD1744733

SENATE BILL NO. 856

Offered January 19, 1995

A BILL to amend and reenact § 33.1-257 of the Code of Virginia, §§ 56-556 and 56-557 of the Code of Virginia as will become effective July 1, 1995, a part of Chapter 855 of the 1994 Acts of Assembly, as carried by reference as § 56-558 of the Code of Virginia as will become effective July 1, 1995, and §§ 56-559 through 56-574 of the Code of Virginia as will become effective July 1, 1995; to amend the Code of Virginia by adding sections numbered 56-573.1 and 56-573.2; and to repeal §§ 33.1-263, 56-39 and 56-562 of the Code of Virginia, relating to the Public-Private Transportation Act of 1995.

Patrons—Schewel, Stosch, Barry, Benedetti, Calhoun, Earley, Goode, Holland, C.A., Holland, R.J., Houck, Lambert, Lucas, Miller, K.G., Miller, Y.B., Quayle, Reasor, Robb, Saslaw, Trumbo, Waddell, Wampler and Woods; Delegates: Albo, Cantor, Clement, Cranwell, Darner, Forbes, Grayson, Griffith, Hall, Harris, Miller, Reid, Rollison and Watkins

Referred to the Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That § 33.1-257 of the Code of Virginia, §§ 56-556 and 56-557 of the Code of Virginia as will become effective July 1, 1995, a part of Chapter 855 of the 1994 Acts of Assembly, as carried by reference as § 56-558 of the Code of Virginia as will become effective July 1, 1995, and §§ 56-559 through 56-574 of the Code of Virginia as will become effective July 1, 1995, are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 56-573.1 and 56-573.2 as follows:

§ 33.1-257. How right to demand tolls ascertained and rates fixed or changed.

No tolls shall be received for passing any such bridge until it shall appear to the circuit court of the county wherein the same is that it is completed according to the act authorizing it. The court shall ascertain whether it is or is not so completed by appointing three disinterested freeholders to view it. If they report in writing that it is so completed and their report be confirmed by the court, the person authorized to erect it, his heirs or assigns, may thenceforth demand and receive, on persons and things passing the same, tolls at the rates fixed by such act or, if none be so fixed, then at such rates as may, from time to time, be fixed by the State Corporation Commission or by law. Though rates of toll be specified in such act, they may, from time to time, be changed by law, unless in such act otherwise expressly provided.

CHAPTER 22.

QUALIFYING TRANSPORTATION FACILITIES ACT OF 1994

PUBLIC-PRIVATE TRANSPORTATION ACT OF 1995.

§ 56-556. (Effective July 1, 1995) Title.

This chapter may be cited as the "Qualifying Transportation Facilities Act of 1994." "Public-Private Transportation Act of 1995."

§ 56-557. (Effective July 1, 1995) Definitions.

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

"Affected local jurisdiction" means any county, city or town in which all or a portion of a qualifying transportation facility is located.

"Certificate" means the certificate of public convenience and necessity issued to an operator under this chapter that permits operation of a qualifying transportation facility.

"Commission" means the State Corporation Commission.

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

"Material default" means any default by the operator in the performance of its duties under subsection F 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 operator and a reasonable cure period has elapsed.

"Operator" means the private entity that is responsible for the acquisition, construction, improvement, maintenance and/or operation of a qualifying transportation facility.

"Private entity" means any natural person, corporation, limited liability company, partnership, joint venture or other private 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.

60 "Qualifying transportation facility" means one or more transportation facilities *acquired, constructed,*  
 61 *improved, maintained and/or* operated by a private entity pursuant to this chapter.

62 ~~"Regulatory authority" means the State Corporation Commission.~~

63 "Responsible public entity" means a public entity that has the power to acquire, construct or,  
 64 improve, *maintain and/or operate* the applicable transportation facility.

65 "Revenues" means the user fees and/or service payments generated by a qualifying transportation  
 66 facility.

67 "Service contract" means a contract entered into *between a public entity and the operator* pursuant to  
 68 § 56-561 of this chapter.

69 "Service payments" means payments to the operator of a qualifying transportation facility pursuant to  
 70 a service contract.

71 "State" means the Commonwealth of Virginia.

72 "Transportation facility" means any road, bridge, tunnel, overpass, ferry, airport, ~~seaport,~~ mass transit  
 73 facility, *vehicle parking facility, port facility* or similar commercial facility used for the transportation of  
 74 persons or goods, together with any other property that is needed to operate the ~~same~~ *transportation*  
 75 *facility*, but shall exclude ~~railroads, railroad-related facilities and pipelines owned by a public service~~  
 76 ~~corporation~~ and rail mass transit facilities owned by an interstate compact agency.

77 "User fees" mean the rates, fees or other charges imposed by the operator of a qualifying  
 78 transportation facility for use of all or a portion of such qualifying transportation facility *pursuant to the*  
 79 *comprehensive agreement.*

80 § 56-558. (Effective July 1, 1995) Policy.

81 A. The General Assembly finds that:

82 1. There is a public need for timely acquisition or construction of and improvements to transportation  
 83 facilities within the Commonwealth *that are compatible with state and local transportation plans;*

84 2. Such public need may not be wholly satisfied by existing ways in which transportation facilities  
 85 are acquired, constructed or improved; and

86 3. Authorizing private entities to acquire, construct, improve ~~and/or,~~ *maintain, and/or* operate one or  
 87 more transportation facilities may result in the ~~acquisition or construction of or improvements to~~  
 88 *availability of such* transportation facilities *to the public* in a more timely or less costly fashion, thereby  
 89 serving the public safety and welfare.

90 B. An action, other than the approval of the responsible public entity under § ~~56-557~~ 56-560 of this  
 91 chapter ~~or issuance of a certificate under § 56-559 of this chapter,~~ shall serve the public purpose of this  
 92 chapter if such action facilitates the timely acquisition or construction of or improvement to a qualifying  
 93 transportation facility or the continued operation of a qualifying transportation facility.

94 C. It is the intent of this chapter, among other things, to facilitate to the greatest extent possible, the  
 95 pooling and funding mechanisms of the Intermodal Surface Transportation Efficiency Act of 1991, *and*  
 96 *any successor legislation,* to the end that transportation financing be expanded and accelerated to  
 97 improve and add to the convenience of the public, and such that public and private entities may have  
 98 the greatest possible flexibility in contracting with each other for the provision of the public services  
 99 which are the subject of this chapter.

100 D. This chapter shall be liberally construed in conformity with the purposes hereof.

101 § 56-559. (Effective July 1, 1995) Prerequisite for operation.

102 ~~No private entity may operate a transportation facility under this chapter without first obtaining~~  
 103 ~~approval of the responsible public entity, obtaining a certificate from the regulatory authority and~~  
 104 ~~entering into a comprehensive agreement with the responsible public entity.~~

105 *Any private entity seeking authorization under this chapter to acquire, construct, improve, maintain*  
 106 *and/or operate a transportation facility shall first obtain approval of the responsible public entity under*  
 107 *§ 56-560. Such private entity may initiate the approval process by requesting approval pursuant to*  
 108 *subsection A of § 56-560 or the responsible public entity may request proposals pursuant to subsection*  
 109 *B of § 56-560.*

110 § 56-560. (Effective July 1, 1995) Approval by the responsible public entity.

111 A. ~~Prior to the approval of the responsible public entity, the private entity shall provide~~ *The private*  
 112 *entity may request approval by the responsible public entity. Any such request shall be accompanied by*  
 113 the following material and information *unless waived by the responsible public entity* with respect to the  
 114 transportation facility or facilities that the private entity proposes to operate as a qualifying  
 115 transportation facility:

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

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

120 3. The projected *total life-cycle* cost of the transportation facility or facilities and the proposed date  
 121 for acquisition of or the beginning of construction of, or improvements to the transportation facility or

122 facilities;

123 4. A statement setting forth the method by which the operator proposes to secure all property  
124 interests required for the transportation facility or facilities; ~~including~~. *The statement shall include:* (i)  
125 *the names and addresses, if known, of the current owners of the property needed for the transportation*  
126 *facility or facilities, (ii) the nature of the interest in the property property interests to be acquired, and*  
127 *(iii) any property that the responsible public entity is expected to be requested to condemn;*

128 5. Information relating to the current transportation plans, if any, of each affected local jurisdiction;

129 6. A list of all permits and approvals required for acquisition or construction of or improvements to  
130 the transportation facility or facilities from local, state, or federal agencies and a projected schedule for  
131 obtaining such permits and approvals;

132 7. A list of public utility facilities, if any, that will be crossed by the transportation facility or  
133 facilities and a statement of the plans of the operator to accommodate such crossings;

134 8. A statement setting forth the operator's general plans for ~~operation of financing and operating the~~  
135 ~~transportation facility or facilities; and~~

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

138 10. Such additional material and information as the responsible public entity may reasonably  
139 request.

140 *B. The responsible public entity may request proposals from private entities for the acquisition,*  
141 *construction, improvement and/or operation of transportation facilities.*

142 ~~B.C.~~ The responsible public entity ~~shall~~ *may* grant approval ~~if~~ *of* the *acquisition, construction,*  
143 *improvement and/or operation of the transportation facility or facilities as a qualifying transportation*  
144 *facility if the responsible public entity determines that it serves the public purpose of this chapter. The*  
145 *responsible public entity may determine that the acquisition, construction, improvement and/or operation*  
146 *of the transportation facility or facilities as a qualifying transportation facility serves such public purpose*  
147 *if:*

148 1. ~~The application is complete;~~

149 2.1. There is a public need for the transportation facility or facilities of the type the private entity  
150 proposes to operate as a qualifying transportation facility;

151 3.2. The transportation facility or facilities and the proposed interconnections with existing  
152 transportation facilities, *and the operator's plans for operation of the qualifying transportation facility or*  
153 *facilities, are reasonable and compatible with the existing transportation plan for the Statestate and local*  
154 *transportation plans;*

155 4.3. The estimated cost of the transportation facility or facilities is reasonable *in relation to similar*  
156 *facilities; and*

157 5.4. The private entity's plans will result in the timely acquisition or construction of or improvements  
158 to the transportation facility or facilities or their more efficient operation; ~~and~~.

159 6. ~~The operator's plan for operation of the transportation facility or facilities is reasonable and is~~  
160 ~~consistent with Commonwealth and local transportation plans.~~

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

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

167 ~~D.E.~~ The approval of the responsible public entity shall be subject to the private entity's entering into  
168 a comprehensive agreement with the responsible public entity.

169 ~~E.F.~~ In connection with its approval of the operation of the transportation facility or facilities as a  
170 qualifying transportation facility, the responsible public entity shall establish a date for the acquisition of  
171 or the beginning of construction of or improvements to the qualifying transportation facility. The  
172 responsible public entity may extend such date from time to time.

173 § 56-561. (Effective July 1, 1995) Service contracts.

174 In addition to any authority otherwise conferred by law, any public entity may contract with an  
175 operator for transportation services to be provided by a qualifying transportation facility in exchange for  
176 such service payments and other consideration as such public entity may deem appropriate.

177 § 56-563. (Effective July 1, 1995) Affected local jurisdictions.

178 A. Any private entity requesting approval from, *or submitting a proposal to, the* responsible public  
179 entity ~~or the issuance of a certificate by the regulatory authority under § 56-560~~ shall notify each  
180 affected local jurisdiction *by furnishing a copy of its request or proposal to each affected local*  
181 *jurisdiction.*

182 B. Each affected local jurisdiction ~~may submit comments relating to a proposed qualifying~~

183 transportation facility to the responsible public entity or the regulatory authority that is not a responsible  
 184 public entity for the respective qualifying transportation facility shall, within sixty days after receiving  
 185 such notice, submit any comments it may have in writing on the proposed qualifying transportation  
 186 facility to the responsible public entity.

187 § 56-564. (Effective July 1, 1995) Dedication of public property.

188 Any public entity may dedicate any property in which it has an interest that it has for public use as  
 189 a qualified transportation facility if it finds that so doing would will serve the public purpose of this  
 190 chapter. In connection with such dedication, such a public entity may convey any property interest that it  
 191 has in such property, subject to the conditions imposed by general law, to the operator, subject to the  
 192 provisions of this chapter, for such consideration as such public entity may determine. The  
 193 aforementioned consideration may include, without limitation, the agreement of the operator to operate  
 194 the qualifying transportation facility.

195 § 56-565. (Effective July 1, 1995) Powers and duties of the operator.

196 A. The operator shall have all power allowed by law generally to a private entity having the same  
 197 form of organization as the operator and shall have the power to acquire, construct, improve or operate  
 198 the qualifying transportation facility and impose user fees and/or enter into service contracts in  
 199 connection with the use thereof. No tolls or user fees may be imposed by the operator on any existing  
 200 interstate highway and . Furthermore, no tolls or user fees may be imposed by the operator on any  
 201 existing free road, bridge, tunnel or overpass without the consent of the affected local jurisdiction unless  
 202 such road, bridge, tunnel or overpass is reconstructed to provide for increased capacity.

203 B. The operator may own, lease or acquire any other right to use or operate the qualifying  
 204 transportation facility.

205 C. Any financing of the qualifying transportation facility may be in such amounts and upon such  
 206 terms and conditions as may be determined by the operator. Without limiting the generality of the  
 207 foregoing, the operator may issue debt, equity or other securities or obligations, enter into sale and  
 208 leaseback transactions and secure any financing with a pledge of, security interest in, or lien on, any or  
 209 all of its property, including the certificate of authority, subject to the provisions of this chapter  
 210 regarding transfer of the certificate of authority all of its property interests in the qualifying  
 211 transportation facility.

212 D. Subject to applicable permit requirements, the operator shall have the authority to cross any canal  
 213 or navigable watercourse so long as the crossing does not unreasonably interfere with then current  
 214 navigation and use of the waterway.

215 E. In operating the qualifying transportation facility, the operator may:

216 1. Make classifications according to reasonable categories for assessment of user fees; and

217 2. With the consent of the responsible public entity, make and enforce reasonable rules to the same  
 218 extent that the responsible public entity could have made may make and enforce rules with respect to a  
 219 similar transportation facility.

220 F. The powers granted to the operator in this section shall be subject to the power of the regulatory  
 221 authority to approve user fees pursuant to subsection C of § 56-562 of this chapter.

222 G.F. The operator shall:

223 1. Acquire, construct or, improve, maintain and/or operate the qualifying transportation facility in a  
 224 manner that meets the engineering standards of the responsible public entity for transportation facilities  
 225 operated and maintained by such responsible public entity, all in accordance with the provisions of the  
 226 comprehensive agreement;

227 2. Keep the qualifying transportation facility open for use by the members of the public at all times  
 228 after its initial opening upon payment of the applicable user fees, except when exempted by § 33.1-252,  
 229 and/or service payments; provided that the qualifying transportation facility may be temporarily closed  
 230 because of emergencies or, with the consent of the responsible public entity, to protect the safety of the  
 231 public or for reasonable construction or maintenance procedures;

232 3. Maintain, or provide by contract for the maintenance of, the qualifying transportation facility;

233 4. File with the regulatory authority: (i) reports describing material contracts with affiliates of the  
 234 operator, (ii) an accurate schedule of applicable user fees and/or service payments charged for use of the  
 235 qualifying transportation facility, and (iii) any other information required by the regulatory authority; and

236 5.4. Cooperate with the responsible public entity in establishing any interconnection with the  
 237 qualifying transportation facility requested by the responsible public entity; and

238 5. Comply with the provisions of the comprehensive agreement and any service contract.

239 § 56-566. (Effective July 1, 1995) Comprehensive agreement.

240 A. Prior to acquiring or commencing construction of or improvements to, constructing, improving,  
 241 maintaining, and/or operating the qualifying transportation facility, the operator shall enter into a  
 242 comprehensive agreement with the responsible public entity. The comprehensive agreement shall provide  
 243 for:

244 1. Delivery of performance and payment bonds in connection with the construction of or

245 improvements to the qualifying transportation facility, in the forms and amounts satisfactory to the  
246 responsible public entity;

247 2. Review of plans and specifications for the qualifying transportation facility by the responsible  
248 public entity and approval by the responsible public entity if the plans and specifications conform to  
249 standard conditions of the responsible public entity;

250 3. Inspection of construction of or improvements to the qualifying transportation facility by the  
251 responsible public entity to ensure that they conform to the engineering standards acceptable to the  
252 responsible public entity;

253 4. Maintenance ~~by the operator~~ of a policy or policies of public liability insurance (copies of which  
254 shall be filed with the responsible public entity accompanied by proofs of coverage), self-insurance, in  
255 form and amount satisfactory to the responsible public entity and reasonably sufficient to insure  
256 coverage of tort liability to the public and employees and to enable the continued operation of the  
257 qualifying transportation facility;

258 5. Monitoring of the maintenance practices of the operator by the responsible public entity and the  
259 taking of such actions as the responsible public entity finds appropriate to ensure that the qualifying  
260 transportation facility is properly maintained; ~~and~~

261 6. Reimbursement to be paid to the responsible public entity for ~~its cost to provide the services~~  
262 ~~performed~~ provided by the responsible public entity;

263 7. Filing of appropriate financial statements on a periodic basis;

264 8. A reasonable maximum rate of return on investment for the operator; and

265 9. The date of termination of the operator's authority and duties under this chapter and dedication to  
266 the appropriate public entity.

267 *B. The comprehensive agreement shall provide for such user fees as may be established from time to  
268 time by agreement of the parties. Any user fees shall be set at a level that, taking into account any  
269 service payments, allows the operator the rate of return on investment specified in the comprehensive  
270 agreement. A copy of any service contract shall be filed with the responsible public entity. A schedule of  
271 the current user fees shall be made available by the operator to any member of the public on request.  
272 In negotiating user fees under this section, the parties shall establish fees that are the same for persons  
273 using the facility under like conditions and that will not materially discourage use of the qualifying  
274 transportation facility. The execution of the comprehensive agreement or any amendment thereto shall  
275 constitute conclusive evidence that the user fees provided for therein comply with this chapter. User fees  
276 established in the comprehensive agreement as a source of revenues may be in addition to, or in lieu of,  
277 service payments.*

278 ~~B.~~ *C. In the comprehensive agreement, the responsible public entity may agree to make grants or  
279 loans to the operator from time to time from amounts received from the federal government or any  
280 division agency or instrumentality thereof.*

281 ~~C.~~ *D. The comprehensive agreement shall incorporate the duties of the operator under this chapter  
282 and may contain such other terms and conditions that the responsible public entity determines serve the  
283 public purpose of this chapter. Without limitation, the comprehensive agreement may contain provisions  
284 under which the responsible public entity agrees to provide notice of default and cure rights for the  
285 benefit of the operator and the persons specified therein as providing financing for the qualifying  
286 transportation facility. The comprehensive agreement may contain such other lawful terms and conditions  
287 to which the operator and the responsible public entity mutually agree, including, without limitation,  
288 provisions regarding unavoidable delays or provisions providing for a loan of public funds to the  
289 operator to acquire, construct, improve, maintain and/or operate one or more qualifying transportation  
290 facilities.*

291 *E. The comprehensive agreement shall provide for the distribution of any earnings in excess of the  
292 maximum rate of return as negotiated in the comprehensive agreement. Without limitation, excess  
293 earnings may be distributed to the Commonwealth's transportation trust fund, to the responsible public  
294 entity, or to the operator for debt reduction or they may be shared with affected local jurisdictions.*

295 *F. Any changes in the terms of the comprehensive agreement, as may be agreed upon by the parties  
296 from time to time, shall be added to the comprehensive agreement by written amendment.*

297 § 56-567. (Effective July 1, 1995) Federal, state and local assistance.

298 The responsible public entity may take any action to obtain federal, *state or local* assistance for a  
299 qualifying transportation facility that serves the public purpose of this chapter and may enter into any  
300 contracts required to receive such federal assistance. *If the responsible public entity is a state agency,  
301 any funds received from the state or federal government or any agency or instrumentality thereof shall  
302 be subject to appropriation by the General Assembly. The responsible public entity may determine that it  
303 serves the public purpose of this chapter for all or any portion of the costs of a qualifying transportation  
304 facility to be paid, directly or indirectly, from the proceeds of a grant or loan made by the local, state  
305 or federal government or any division agency or instrumentality thereof.*

306 § 56-568. (Effective July 1, 1995) Material default; remedies.

307 A. The regulatory authority may revoke a certificate for a qualifying transportation facility if:

308 1. A material default in the performance of the operator's duties under the comprehensive agreement  
309 or under the service contract, if any, has occurred and is continuing;

310 2. Acquisition or construction of or improvement to the qualifying transportation facility has not  
311 begun by the date established by the responsible public entity as such date has been extended;

312 3. For failure to provide reasonably adequate service and facilities at reasonable and uniform user  
313 fees as provided by law; or

314 4. For failure to comply with any lawful order of the regulatory authority.

315 B. Prior to any revocation of a certificate the regulatory authority shall give written notice to the  
316 operator and any person providing financing for the qualifying transportation facility, including any  
317 trustee or agent for any person providing financing. The operator and the persons providing financing  
318 for the qualifying transportation facility shall be entitled to a reasonable time period to cure the event  
319 that could lead to a revocation of the certificate. Prior to any revocation of the certificate, the regulatory  
320 authority shall conduct a hearing to determine if revocation of the certificate serves the public purpose  
321 of this chapter. Any interested party shall be entitled to participate in such hearing, subject to rules  
322 established by the regulatory authority that may limit the appearance of parties with substantially  
323 identical interests.

324 *Except upon agreement of the operator and any other parties identified in the comprehensive*  
325 *agreement, no responsible public entity shall exercise any of the remedies provided in this section or in*  
326 *subsection B or C of § 56-569 unless the Commission, after notice to the operator and the secured*  
327 *parties (as may appear in the operator's records) and an opportunity for hearing, shall first issue a*  
328 *declaratory judgment that a material default, as defined in § 56-557, has occurred and is continuing.*

329 C. Upon the revocation of a certificate of authorityB. Upon entry by the Commission of a declaratory  
330 judgment order pursuant to subsection A above, unless such order is stayed pending appeal to the  
331 Virginia Supreme Court, the responsible public entity may exercise any or all of the following remedies:

332 1. The responsible public entity may elect to take over the transportation facility or facilities and in  
333 such case it shall succeed to all of the right, title and interest in such transportation facility or facilities,  
334 subject to any liens on revenues previously granted by the operator to any person providing financing  
335 therefor and the provisions of subsection DC below. Any liens on the real estate and tangible property  
336 comprising the transportation facility or facilities shall be deemed to be extinguished and shall be  
337 released on request if the responsible public entity takes over the qualifying transportation facility  
338 pursuant to this subsection.

339 2. Any responsible public entity having the power of condemnation under applicablestate law may  
340 exercise such power of condemnation to acquire the qualifying transportation facility or facilities.  
341 Nothing in this chapter shall be construed to limit the exercise of the power of condemnation by any  
342 responsible public entity against a qualifying transportation facility after revocation of the certificate~~the~~  
343 *entry by the Commission of a final declaratory judgment order pursuant to subsection A above.* Any  
344 person that has provided financing for the qualifying transportation facility, and the operator, to the  
345 extent of its capital investment, may participate in the condemnation proceedings with the standing of a  
346 property owner.

347 3. The responsible public entity may *terminate the comprehensive agreement and exercise all any*  
348 *other rights and remedies which may be available to it at law or in equity.*

349 4. *The responsible public entity may make or cause to be made any appropriate claims under the*  
350 *performance and/or payment bonds required by subsection A 1 of § 56-566.*

351 D.C. In the event the responsible public entity elects to take over a qualifying transportation facility  
352 pursuant to subsection CB 1 of this section, the responsible public entity shall acquire, construct,  
353 improve, operate and maintain the transportation facility, impose user fees for the use thereof and  
354 comply with any service contracts as if it were the operator. User fees shall remain subject to approval  
355 by the regulatory authority in accordance with the standards set forth in subsection C of § 56-562 and,  
356 solely for such purpose, the regulatory authority shall retain jurisdiction over the qualifying  
357 transportation facility. Any revenues that are subject to a lien shall be collected for the benefit of, and  
358 paid to, secured parties, as their interests may appear, to the extent necessary to satisfy the operator's  
359 obligations to secured parties, including the maintenance of reserves *and such liens shall be*  
360 *correspondingly reduced and, when paid off, released.* Before suchany payments to, or for the benefit  
361 of, secured parties, the responsible public entity may use revenues to pay current operation and  
362 maintenance costs of the transportation facility or facilities, including compensation to the responsible  
363 public entity for its services in operating and maintaining the qualifying transportation facility.  
364 Remaining revenues, if any, after all such payments have been made or provided for in an amount not  
365 to exceed an amount that will provide the operator with the rate of return on its capital investment  
366 approved by the regulatory authority under § 56-562 of this chapter shall be paid to the operator over  
367 the time period that the certificate would have been in place had it not been revoked*for operation and*

368 maintenance of the transportation facility or facilities, and to, or for the benefit of, secured parties, have  
369 been made, shall be paid to the operator, subject to the negotiated maximum rate of return. The right to  
370 receive such payment, if any, shall be considered just compensation for the transportation facility or  
371 facilities. The full faith and credit of the responsible public entity shall not be pledged to secure any  
372 financing of the operator by the election to take over the qualifying transportation facility. Assumption  
373 of operation of the qualifying transportation facility shall not obligate the responsible public entity to  
374 pay any obligation of the operator from sources other than revenues.

375 § 56-569. (Effective July 1, 1995) Condemnation.

376 A. At the request of the operator, the responsible public entity may exercise any power of  
377 condemnation that it has under law for the purpose of acquiring any lands or estates or interests therein  
378 to the extent that the responsible public entity finds that such action serves the public purpose of this  
379 chapter. Any amounts to be paid in any such condemnation proceeding shall be paid by the operator.

380 B. Except as provided in subsection A of this section, until a ~~certificate has been revoked~~*the*  
381 *Commission has entered a final declaratory judgment order under subsection A of § 56-568*, the power  
382 of condemnation may not be exercised against a qualifying transportation facility.

383 C. After the ~~certificate has been revoked~~*entry of such final order by the Commission*, any responsible  
384 public entity having the power of condemnation under law may exercise such power of condemnation as  
385 provided in subsection ~~EB 2~~ of § 56-568 in lieu of, or at any time after taking over the transportation  
386 facility pursuant to subsection ~~EB 1~~ of § 56-568.

387 § 56-570. (Effective July 1, 1995) Utility crossings.

388 The operator and each public service company, public utility, railroad, and cable television provider,  
389 whose facilities are to be crossed or affected shall cooperate fully with the other in planning and  
390 arranging the manner of the crossing or relocation of the facilities. Any such entity possessing the power  
391 of condemnation is hereby expressly granted such powers in connection with the moving or relocation  
392 of facilities to be crossed by the qualifying transportation facility or that must be relocated to the extent  
393 that such moving or relocation is made necessary or desirable by construction of or improvements to the  
394 qualifying transportation facility, which shall be construed to include construction of or improvements to  
395 temporary facilities for the purpose of providing service during the period of construction or  
396 improvement. Any amount to be paid for such crossing, construction, moving or relocating of facilities  
397 shall be paid for by the operator. Should the operator and any such public service company, public  
398 utility, railroad, and cable television provider not be able to agree upon a plan for the crossing or  
399 relocation, the ~~regulatory authority~~*Commission* may determine the manner in which the crossing or  
400 relocation is to be accomplished and any damages due arising out of the crossing or relocation. The  
401 ~~regulatory authority~~*Commission* may employ expert engineers who shall examine the location and plans  
402 for such crossing or relocation, hear any objections and consider modifications, and make a  
403 recommendation to the ~~regulatory authority~~*Commission*. In such a case, the cost of the experts is to be  
404 borne by the operator.

405 § 56-571. (Effective July 1, 1995) Police powers; violations of law.

406 A. All police officers of the Commonwealth and of each *affected* local jurisdiction, shall have the  
407 same powers and jurisdiction within the limits of such qualifying transportation facility as they have in  
408 their respective areas of jurisdiction and such police officers shall have access to the qualifying  
409 transportation facility at any time for the purpose of exercising such powers and jurisdiction. This  
410 authority does not extend to the private offices, buildings, garages and other improvements of the  
411 operator to any greater degree than the police power extends to any other private buildings and  
412 improvements.

413 B. To the extent the transportation facility is a road, bridge, tunnel, overpass or similar transportation  
414 facility for motor vehicles, the traffic and motor vehicle laws of the Commonwealth or, if applicable,  
415 any local jurisdiction shall be the same as those applying to conduct on similar transportation facilities  
416 in the Commonwealth *or such local jurisdiction*. Punishment for offenses shall be as prescribed by law  
417 for conduct occurring on similar transportation facilities in the Commonwealth *or such local jurisdiction*.

418 § 56-572. (Effective July 1, 1995) Dedication of assets.

419 The regulatory authority shall determine the date of termination of the original permanent financing  
420 and shall terminate the operator's certificate on a date that shall not exceed ten years from the end of the  
421 term of the original permanent financing. The regulatory authority may change the termination date to  
422 take into account any refinancing of the original permanent financing, including any refinancing for the  
423 purpose of expansion, or any early termination of the original permanent financing to the extent that  
424 such modification serves the public purpose of this chapter.*The responsible public entity shall terminate*  
425 *the operator's authority and duties under this chapter on the date set forth in the comprehensive*  
426 *agreement*. Upon the termination of the certificate, the authority and duties of the operator under this  
427 chapter shall cease, and the qualifying transportation facility shall be dedicated to the responsible public  
428 entity or, if the qualifying transportation facility was initially dedicated by an affected local jurisdiction,

429 to such affected local jurisdiction for public use.

430 § 56-573. (Effective July 1, 1995) Sovereign immunity.

431 Nothing in this chapter shall be construed as or deemed a waiver of the sovereign immunity of the  
432 Commonwealth, any responsible public entity or any affected local jurisdiction *or any officer or*  
433 *employee thereof* with respect to the participation in, or approval of all or any part of the qualifying  
434 transportation facility or its operation, including but not limited to interconnection of the qualifying  
435 transportation facility with any other transportation facility. Counties, cities and towns in which a  
436 qualifying transportation facility is located shall possess sovereign immunity with respect to its  
437 construction and operation.

438 § 56-573.1. *Procurement.*

439 *The Virginia Public Procurement Act (§ 11-35 et seq.) shall not apply to this chapter; however, a*  
440 *responsible public entity may enter into a comprehensive agreement only in accordance with procedures*  
441 *adopted by it which are consistent with those of § 11-37 to the extent such section applies to the*  
442 *procurement of "other than professional services" through competitive negotiation as defined in § 11-37.*  
443 *Such responsible public entities shall not be required to select the proposal with the lowest price offer,*  
444 *but may consider price as one factor in evaluating the proposals received.*

445 § 56-573.2. *Jurisdiction.*

446 *The Commission shall have exclusive jurisdiction to adjudicate all matters specifically committed to*  
447 *its jurisdiction by this chapter.*

448 § 56-574. (Effective July 1, 1995) Preservation of the Virginia Highway Corporation Act of 1988.

449 Nothing in this chapter shall be construed to repeal or change in any manner the Virginia Highway  
450 Corporation Act of 1988, as amended (§ 56-535 *et seq.*). *Nothing in the Virginia Highway Corporation*  
451 *Act of 1988, as amended, shall apply to qualifying transportation facilities undertaken pursuant to the*  
452 *authority of this chapter.*

453 **2. That §§ 33.1-263, 56-39 and 56-562 of the Code of Virginia are repealed.**