

LD1744733

**SENATE BILL NO. 856**

Senate Amendments in [ ] — January 31, 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 [ 56-561 and §§ 56-563 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 [ 56-561 and §§ 56-563 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 [ , but shall not include any public

ENGROSSED

SB856E

60 *service company* ] .

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

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

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

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

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

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

72 "State" means the Commonwealth of Virginia.

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

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

81 § 56-558. (Effective July 1, 1995) Policy.

82 A. The General Assembly finds that:

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

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

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

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

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

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

102 § 56-559. (Effective July 1, 1995) Prerequisite for operation.

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

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

111 § 56-560. (Effective July 1, 1995) Approval by the responsible public entity.

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

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

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

121 3. The projected *total life-cycle* cost of the transportation facility or facilities and the proposed date

for acquisition of or the beginning of construction of, or improvements to the transportation facility or facilities;

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

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

6. A list of all permits and approvals required for acquisition or construction of or 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 facilities, if any, that will be crossed by the transportation facility or facilities and a statement of the plans of the operator to accommodate such crossings;

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

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

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

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

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

1. ~~The application is complete;~~

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

3.2. The transportation facility or facilities and the proposed interconnections with existing transportation facilities, ~~and the operator's plans for operation of the qualifying transportation facility or facilities, are reasonable and compatible with [ the existing transportation plan for the Statestate and local transportation plans; the state transportation plan and with the local comprehensive plan or plans;~~

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

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

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

*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.*

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

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

~~E-F.~~ In connection with its approval of the 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 from time to time.

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

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

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

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

183 jurisdiction.

184 B. Each affected local jurisdiction ~~may submit comments relating to a proposed qualifying~~  
185 ~~transportation facility to the responsible public entity or the regulatory authority that is not a responsible~~  
186 ~~public entity for the respective qualifying transportation facility shall, within sixty days after receiving~~  
187 ~~such notice, submit any comments it may have in writing on the proposed qualifying transportation~~  
188 ~~facility to the responsible public entity [ : and indicating whether the facility is compatible with the local~~  
189 ~~comprehensive plan. ]~~

190 § 56-564. (Effective July 1, 1995) Dedication of public property.

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

198 § 56-565. (Effective July 1, 1995) Powers and duties of the operator.

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

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

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

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

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

- 219 1. Make classifications according to reasonable categories for assessment of user fees; and  
220 2. With the consent of the responsible public entity, make and enforce reasonable rules to the same  
221 extent that the responsible public entity ~~could have made~~may make and enforce rules with respect to a  
222 similar transportation facility.

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

225 G.F. The operator shall:

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

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

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

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

239 5.4. Cooperate with the responsible public entity in establishing any interconnection with the  
240 qualifying transportation facility requested by the responsible public entity.; and

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

242 § 56-566. (Effective July 1, 1995) Comprehensive agreement.

243 A. Prior to acquiring ~~or commencing construction of or improvements to, constructing, improving,~~  
244 *maintaining, and/or operating* the qualifying transportation facility, the operator shall enter into a

comprehensive agreement with the responsible public entity. The comprehensive agreement shall provide for:

1. Delivery of performance and payment bonds in connection with the construction of or improvements to the qualifying transportation facility, in the forms and amounts satisfactory to the responsible public entity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The responsible public entity may take any action to obtain federal, *state or local* assistance for a qualifying transportation facility that serves the public purpose of this chapter and may enter into any contracts required to receive such federal assistance. *If the responsible public entity is a state agency, any funds received from the state or federal government or any agency or instrumentality thereof shall be subject to appropriation by the General Assembly. The responsible public entity may determine that it*

serves the public purpose of this chapter for all or any portion of the costs of a qualifying transportation facility to be paid, directly or indirectly, from the proceeds of a grant or loan made by the local, state or federal government or any division agency or instrumentality thereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

D.C. In the event the responsible public entity elects to take over a qualifying transportation facility pursuant to subsection C 1 of this section, the responsible public entity shall acquire, construct, improve, operate and maintain the transportation facility, impose user fees for the use thereof and comply with any service contracts as if it were the operator. User fees shall remain subject to approval by the regulatory authority in accordance with the standards set forth in subsection C of § 56-562 and, solely for such purpose, the regulatory authority shall retain jurisdiction over the qualifying transportation facility. Any revenues that are subject to a lien shall be collected for the benefit of, and paid to, secured parties, as their interests may appear, to the extent necessary to satisfy the operator's obligations to secured parties, including the maintenance of reserves and such liens shall be correspondingly reduced and, when paid off, released. Before suchany payments to, or for the benefit of, secured parties, the responsible public entity may use revenues to pay current operation and maintenance costs of the transportation facility or facilities, including compensation to the responsible public entity for its services in operating and maintaining the qualifying transportation facility. Remaining revenues, if any, after all such payments have been made or provided for in an amount not

to exceed an amount that will provide the operator with the rate of return on its capital investment approved by the regulatory authority under § 56-562 of this chapter shall be paid to the operator over the time period that the certificate would have been in place had it not been revoked for operation and maintenance of the transportation facility or facilities, and to, or for the benefit of, secured parties, have been made, shall be paid to the operator, subject to the negotiated maximum rate of return. The right to receive such payment, if any, shall be considered just compensation for the transportation facility or facilities. The full faith and credit of the responsible public entity shall not be pledged to secure any financing of the operator by the election to take over the qualifying transportation facility. Assumption of operation of the qualifying transportation facility shall not obligate the responsible public entity to pay any obligation of the operator from sources other than revenues.

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

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

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

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

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

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

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

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

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

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

The regulatory authority shall determine the date of termination of the original permanent financing and shall terminate the operator's certificate on a date that shall not exceed ten years from the end of the term of the original permanent financing. The regulatory authority may change the termination date to take into account any refinancing of the original permanent financing, including any refinancing for the purpose of expansion, or any early termination of the original permanent financing to the extent that such modification serves the public purpose of this chapter. The responsible public entity shall terminate the operator's authority and duties under this chapter on the date set forth in the comprehensive

429 *agreement. Upon the termination of the certificate, the authority and duties of the operator under this*  
430 *chapter shall cease, and the qualifying transportation facility shall be dedicated to the responsible public*  
431 *entity or, if the qualifying transportation facility was initially dedicated by an affected local jurisdiction,*  
432 *to such affected local jurisdiction for public use.*

433 § 56-573. (Effective July 1, 1995) Sovereign immunity.

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

441 § 56-573.1. *Procurement.*

442 *The Virginia Public Procurement Act (§ 11-35 et seq.) shall not apply to this chapter; however, a*  
443 *responsible public entity may enter into a comprehensive agreement only in accordance with procedures*  
444 *adopted by it which are consistent with those of § 11-37 to the extent such section applies to the*  
445 *procurement of "other than professional services" through competitive negotiation as defined in § 11-37*  
446 *[ and § 11-48 ] . Such responsible public entities shall not be required to select the proposal with the*  
447 *lowest price offer, but may consider price as one factor in evaluating the proposals received.*

448 § 56-573.2. *Jurisdiction.*

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

451 § 56-574. (Effective July 1, 1995) Preservation of the Virginia Highway Corporation Act of 1988.

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

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