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SENATE BILL NO. 528

Offered January 22, 1996

A BILL to amend and reenact §§ 56-542, 56-543 as it is effective and as it may become effective, and 56-560 of the Code of Virginia, relating to the Virginia Highway Corporation Act of 1988 and the Public-Private Transportation Act of 1995.

Patrons—Howell, Houck, Marsh, Miller, Y.B. and Trumbo

Referred to the Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-542, 56-543 as it is effective and as it may become effective and 56-560 of the Code of Virginia are amended and reenacted as follows:

§ 56-542. Powers of the Commission.

The Commission shall have the power to regulate the operator under this title as a public service corporation. The Commission shall also have the power, and be charged with the duties of reviewing and approving or denying the application, of supervising and controlling the operator in the performance of its duties under this chapter and title, and of correcting any abuse in the performance of the operator's public duties. *The Commission shall have the power to review and accept an application from an operator seeking a change in status in accordance with the provisions of subsection C of § 56-543.* Pursuant to § 56-36, the Commission shall require from the operator a verified report describing the nature of its contractual and other relationships with individuals or entities contracting with the operator for the provision of significant financial, construction, or maintenance services. The Commission shall review the report and such other materials as it shall deem necessary for the purpose of determining improper or excessive costs, and shall exclude from the operator's costs any amounts which it finds are improper or excessive. The Commission also shall have the duty and authority to approve or revise the toll rates charged by the operator. Initial rates shall be approved if they appear reasonable to the user in relation to the benefit obtained, not likely to materially discourage use of the roadway and provide the operator no more than a reasonable rate of return as determined by the Commission. Thereafter, the Commission, upon application, complaint or its own initiative, and after investigation, may order substituted for any toll being charged by the operator, a toll which is set at a level which is reasonable to the user in relation to the benefit obtained and which will not materially discourage use of the roadway by the public and which will provide the operator no more than a reasonable return as determined by the Commission. The Commission may charge a reasonable annual fee to cover the costs of supervision and controlling the operator in the performance of its duties under this chapter and pursuant to this section.

§ 56-543. (Effective until July 1, 1998) Powers and duties of roadway operator.

A. The operator shall have all power allowed by law generally to persons having the same form of organization as the operator, including, without limitation, the authority to operate the roadway and charge tolls for the use thereof, and may pledge any revenue net of operational expenses realized from tolls charged for the use of the roadway in order to secure repayment of any obligations incurred for the construction, enlargement or operation of such roadway. Any financing of the acquisition, construction, enlargement, or operation of the roadway may be in such amounts and upon such terms and conditions as may be deemed necessary or appropriate by the operator to provide for the acquisition, construction, enlargement, and operation of the roadway, issuance costs, other financing obligations, and reasonable reserves. Assumption of operation of the project shall not obligate the Commonwealth to pay any obligation of the operator whether secured or otherwise, from sources other than toll revenue. Subject to applicable permit requirements, the operator shall have the authority to cross any canal or navigable watercourse so long as the crossing does not unreasonably interfere with navigation and use of the waterway. In operating the roadway, the operator may:

1. Classify traffic according to reasonable categories for assessment of tolls; and
2. With the consent of the Department, make and enforce reasonable regulations, including regulations:
 - a. Which set maximum and minimum speeds that shall conform to Department and state practices;
 - b. Which exclude undesirable vehicles or cargoes or materials from the use of the roadway; or
 - c. Which establish commuter lanes for use during all or any part of a day and limit the use of such lanes to certain traffic.
3. The enumeration of powers in this subsection shall not limit the power of the operator to do anything it deems necessary and appropriate in the operation of the roadway, provided that the practice

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60 is reasonable and nondiscriminatory. The powers granted to the operator in this subsection shall not be
61 deemed to limit the authority of the Commission to regulate the operator under this title.

62 B. The operator shall have the following duties:

63 1. It shall file and maintain at all times with the Commission an accurate schedule of rates charged
64 to the public for use of all or any portion of the roadway and it shall also file and maintain a statement
65 that such rates will apply uniformly to all users within any such reasonable classification as the operator
66 may elect to implement. These rates shall be neither applied nor collected in a discriminatory fashion,
67 and free vehicular passage shall be permitted to those persons referred to in subsection A of § 33.1-252.

68 2. It shall construct and maintain the roadway for anticipated use according to appropriate standards
69 of the Department for public highways operated and maintained by the Department, and enlarge or
70 expand the road when unsatisfied demand for use of the roadway makes it economically feasible to do
71 so. The operator shall agree with the Department for inspection of construction work by the Department
72 at appropriate times during any construction or enlargement. In addition, it shall cooperate fully with the
73 Department in establishing any interconnection with the roadway that the Department may make.

74 3. It shall contract with the Commonwealth for enforcement of the traffic and public safety laws by
75 state authorities, and may similarly contract with appropriate local authorities for those portions of the
76 roadway within the local jurisdiction.

77 C. *If an operator enters into a comprehensive agreement governed by the Public-Private*
78 *Transportation Act of 1995 (§ 56-556 et. seq.), the operator shall satisfy its duties under the certificate*
79 *of authority. Such action may be accomplished upon application to and acceptance by the Commission*
80 *from which a certificate of authority was granted and upon the execution of a comprehensive agreement*
81 *with the responsible public entity in accordance with the Public-Private Transportation Act of 1995*
82 *(§ 56-556 et. seq.)*

83 § 56-543 (Effective July 1, 1998) Powers and duties of roadway operator.

84 A. The operator shall have all power allowed by law generally to persons having the same form of
85 organization as the operator, including, without limitation, the authority to operate the roadway and
86 charge tolls for the use thereof, and may pledge any revenue net of operational expenses realized from
87 tolls charged for the use of the roadway in order to secure repayment of any obligations incurred for the
88 construction, enlargement or operation of such roadway. Any financing of the acquisition, construction,
89 enlargement, or operation of the roadway may be in such amounts and upon such terms and conditions
90 as may be deemed necessary or appropriate by the operator to provide for the acquisition, construction,
91 enlargement, and operation of the roadway, issuance costs, other financing obligations, and reasonable
92 reserves. The Commonwealth shall not obligate its full faith and credit on any financing of the operator.
93 Assumption of operation of the project shall not obligate the Commonwealth to pay any obligation of
94 the operator whether secured or otherwise, from sources other than toll revenue. Subject to applicable
95 permit requirements, the operator shall have the authority to cross any canal or navigable watercourse so
96 long as the crossing does not unreasonably interfere with navigation and use of the waterway. In
97 operating the roadway, the operator may:

98 1. Classify traffic according to reasonable categories for assessment of tolls; and

99 2. With the consent of the Department, make and enforce reasonable regulations, including
100 regulations:

101 a. Which set maximum and minimum speeds that shall conform to Department and state practices;

102 b. Which exclude undesirable vehicles or cargoes or materials from the use of the roadway; or

103 c. Which establish commuter lanes for use during all or any part of a day and limit the use of such
104 lanes to certain traffic.

105 3. The enumeration of powers in this subsection shall not limit the power of the operator to do
106 anything it deems necessary and appropriate in the operation of the roadway, provided that the practice
107 is reasonable and nondiscriminatory. The powers granted to the operator in this subsection shall not be
108 deemed to limit the authority of the Commission to regulate the operator under this title.

109 B. The operator shall have the following duties:

110 1. It shall file and maintain at all times with the Commission an accurate schedule of rates charged
111 to the public for use of all or any portion of the roadway and it shall also file and maintain a statement
112 that such rates will apply uniformly to all users within any such reasonable classification as the operator
113 may elect to implement. These rates shall be neither applied nor collected in a discriminatory fashion,
114 and free vehicular passage shall be permitted to those persons referred to in subsection A of § 33.1-252.

115 2. It shall construct and maintain the roadway for anticipated use according to appropriate standards
116 of the Department for public highways operated and maintained by the Department, and enlarge or
117 expand the road when unsatisfied demand for use of the roadway makes it economically feasible to do
118 so. The operator shall agree with the Department for inspection of construction work by the Department
119 at appropriate times during any construction or enlargement. In addition, it shall cooperate fully with the
120 Department in establishing any interconnection with the roadway that the Department may make.

121 3. It shall contract with the Commonwealth for enforcement of the traffic and public safety laws by

state authorities, and may similarly contract with appropriate local authorities for those portions of the roadway within the local jurisdiction.

C. If an operator enters into a comprehensive agreement governed by the Public-Private Transportation Act of 1995 (§ 56-556 et. seq.), the operator shall satisfy its duties under the certificate of authority. Such action may be accomplished upon application to and acceptance by the Commission from which a certificate of authority was granted and upon the execution of a comprehensive agreement with the responsible public entity in accordance with the Public-Private Transportation Act of 1995 (§ 56-556 et. seq.)

§ 56-560. Approval by the responsible public entity.

A. The private entity may request approval by the responsible public entity. Any such request shall be accompanied by the following material and information unless waived by the responsible public entity with respect to the transportation facility or facilities that the private entity proposes to 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 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. 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 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 financing and operating the transportation facility or facilities;

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.

C. The responsible public entity may grant approval 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. 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;

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 state transportation plan and with the local comprehensive plan or plans;

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

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.

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 and other necessary advisors or consultants.

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.

183 F. In connection with its approval of the operation of the transportation facility or facilities as a
184 qualifying transportation facility, the responsible public entity shall establish a date for the acquisition of
185 or the beginning of construction of or improvements to the qualifying transportation facility. The
186 responsible public entity may extend such date from time to time.

187 *G. The responsible public entity shall have the power to accept an application from and enter into a*
188 *comprehensive agreement with an operator seeking a change in status in accordance with the provisions*
189 *of subsection C of § 56-543.*