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HOUSE BILL NO. 1898

Offered January 15, 1999

A *BILL to amend and reenact § 56-566 of the Code of Virginia, relating to comprehensive agreements under the Public-Private Transportation Act of 1995.*

Patron—Joannou

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:**1. That § 56-566 of the Code of Virginia is amended and reenacted as follows:**

§ 56-566. Comprehensive agreement.

A. Prior to acquiring, constructing, improving, 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 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;

6. Reimbursement to be paid to the responsible public entity for services 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. *No schedule of user fees or any amendment thereto shall be included in any comprehensive agreement unless and until approved by an affirmative vote of a majority of the members elected to each house of the General Assembly.* The execution of the comprehensive agreement or any amendment thereto, *following approval by the General Assembly as provided for in this subsection*, shall constitute conclusive evidence that the user fees provided for therein comply with this chapter. User fees *approved by the General Assembly* and established in the comprehensive agreement as a source of revenues may be in addition to, or in lieu of, service payments.

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 agency or instrumentality thereof.

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

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60 benefit of the operator and the persons specified therein as providing financing for the qualifying
61 transportation facility. The comprehensive agreement may contain such other lawful terms and
62 conditions to which the operator and the responsible public entity mutually agree, including, without
63 limitation, provisions regarding unavoidable delays or provisions providing for a loan of public funds to
64 the operator to acquire, construct, improve, maintain and/or operate one or more qualifying
65 transportation facilities.

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

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