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HOUSE BILL NO. 971

Offered January 26, 1998

A BILL to amend the Code of Virginia by adding in Title 11 a chapter numbered 8, consisting of sections numbered 11-81 through 11-84, relating to the Public-Private Infrastructure Partnership Act.

Patrons—Purkey and Rollison

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 11 a chapter numbered 8, consisting of sections numbered 11-81 through 11-84 as follows:

CHAPTER 8.**PUBLIC-PRIVATE INFRASTRUCTURE PARTNERSHIP ACT.****§ 11-81. Definitions.**

As used in this chapter, unless the context requires otherwise:

"Infrastructure systems and facilities" or "facilities" means capital-related improvements and additions to state or local Intelligent Transportation Systems and Services and environmental infrastructure, including but not limited to vehicles and equipment, marine-related facilities, airports or aviation facilities, infrastructure management systems, water treatment facilities, wastewater treatment facilities, solid-waste facilities and other infrastructure-related investments.

"Private entity" means any private sector corporation, partnership, association, company, business, firm, limited liability company, joint venture or other private business entity.

"Public body" means any executive branch agency or department of state government created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this chapter; and any local governing body.

§ 11-82. Project Selection.

A. A public body may solicit competitive proposals from, and negotiate and enter into agreements with, private entities to undertake as appropriate, together with the public body and other public bodies, all or a portion of the study, planning, design, construction, operation, and maintenance of infrastructure systems and facilities, using in whole or in part private sources of financing.

B. Each proposal shall be weighed on its own merits, and each agreement shall be negotiated individually, and as a stand-alone project.

C. Projects may be identified by the public and/or private entities at their discretion. As a precondition to the imposition or increase of a user fee, the governmental agency shall conduct at least one public hearing at which public testimony will be received regarding a proposed user fee revenue or increase in user fee revenues. The public hearing shall precede the action by the public body to actually impose a user fee or to increase an existing user fee. The public body shall consider the public comments prior to imposing a new or increased user fee.

D. All projects designed, constructed, and operated under this chapter shall comply with all applicable laws and regulations in existence at the time the agreement is executed.

E. The public body is encouraged to consult with legal, financial, and other experts within and outside government in the negotiation and development of agreements.

F. The public body may consider a creative combination of public and private capital and non-capital sources of financing as well as creative public and/or private financing and credit enhancement techniques.

G. The public body may consider public/private finance, development and operational techniques to reduce development costs and enhance cash flow.

§ 11-83. Terms of Agreement.

A. Agreements shall provide for private ownership of a project during the construction period. After completion and final acceptance of each project or discrete segment thereof, the agreement shall provide for public ownership of the infrastructure facilities and lease to the private entity unless the public body elects to provide for ownership of the facility by the private entity during the term of the agreement or longer if agreed by both parties.

B. The public body shall lease each of the projects, or applicable project segments, to the private entities for operating purpose for up to twenty five years per segment.

C. The public body may exercise any power possessed by it to facilitate the development, construction, financing, operation and maintenance of infrastructure projects under this chapter.

D. Agreements for maintenance services entered into under this chapter shall provide for

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60 reimbursement for services rendered by public bodies. Such reimbursement may be in cash or in kind.

61 E. Agreements for police services under the agreement may be entered into with any qualified
62 law-enforcement agency, and shall provide for reimbursement for services rendered by that agency. Such
63 reimbursement shall be in cash or in kind.

64 F. The public body may provide services for which it is reimbursed, including but not limited to
65 preliminary planning, environmental certification, and preliminary design.

66 G. The plans and specifications for each project constructed under this chapter shall comply with the
67 public body's standards for public projects, as adjusted to accommodate innovative techniques.

68 H. Upon reversion of the facility to the public body, the project shall meet all applicable standards
69 reasonably established by the public body.

70 I. Agreements shall address responsibility for reconstruction or renovations that are required in
71 order for a facility to meet all applicable standards upon reversion of the facility to the public body.

72 J. For the purpose of facilitating these projects and to assist the private entity in the financing,
73 development, construction, and operation of the infrastructure systems and facilities, the agreements may
74 include provisions for the public body to exercise its authority, including:

75 1. The lease of facilities, rights-of-way, and airspace, including airspace next to, above or below the
76 right-of-way associated or to be associated with the private entity's infrastructure facility;

77 2. Exercise the power of eminent domain;

78 3. Remedies in the event of default of either of the parties;

79 4. Granting of contractual and real property rights;

80 5. Liability during construction and the term of the lease;

81 6. Authority to negotiate acquisition of rights-of-way in excess of appraised value;

82 7. Granting of development rights and opportunities;

83 8. Granting of necessary easements and rights of access, issuance of permits and other
84 authorizations, leasing existing rights-of-way or rights-of-way subsequently acquired with public or
85 private financing;

86 9. Protection from competition;

87 10. Use of underutilized real estate assets owned by the public body; and

88 11. Other provisions deemed necessary by the public body.

89 K. In consideration for the reversion rights in these privately constructed facilities, the public body
90 may negotiate a charge for the lease of airspace rights during the term of the agreement.

91 L. If, after the expiration of this period, the public body continues to lease airspace rights to the
92 private entity, it shall do so at fair market value.

93 M. The agreement may also provide the private entity the right of first refusal to undertake projects
94 utilizing airspace owned by the public body in the vicinity of the project.

95 N. Agreements under this chapter may include any contractual provision that is necessary to protect
96 the project revenues required to repay the costs incurred to study, plan, design, finance, acquire, build,
97 install, operate, enforce laws, and maintain infrastructure systems and facilities which will not
98 unreasonably inhibit or prohibit the development of additional infrastructure systems and facilities.

99 O. Agreements under this chapter shall include provisions requiring liability insurance coverage to
100 be secured and maintained in amounts appropriate to protect the project's viability and may address the
101 public body for design and construction liability where the public body has approved relevant design
102 and construction plans.

103 P. Nothing in this chapter shall limit the right of the public body to render such advice and to make
104 such recommendations as it deems to be in the best interests of the public.

105 § 11-84. Financial Arrangements.

106 A. The public body may enter into agreements using federal and public body financing in connection
107 with the projects, including without limitation, grants, loans, and other measures authorized by federal
108 and state law, and to do such things as are necessary and desirable to maximize the funding and
109 financing, including the formation of a revolving loan fund to implement this chapter.

110 B. Agreements entered into under this chapter shall authorize the private entity to lease the facilities
111 within a designated area from the public body and to impose user fees within the designated areas to
112 allow a reasonable rate of return on investment, established through a negotiated agreement between
113 the public body and the private entity.

114 C. The negotiated agreement may determine a maximum rate of return on investment, based on
115 project characteristics.

116 D. Agreements may include negotiated "incentive" rates of return in excess of the negotiated
117 maximum rate of return on investment. The incentive rates of return shall be designed to provide
118 financial benefits to the public body and the private entity, given the attainment of various safety,
119 performance, or infrastructure demand management goals.

120 E. Agreements shall require that, over the term of the ownership or lease, the user fees be applied to
121 payment of the private entity's capital outlay costs for the project, including return on private equity,

122 *interest expense, the costs associated with operations, collection of user fees, maintenance and*
123 *administration of the facility, reimbursement to the public body for the reasonable costs of project*
124 *review and oversight, technical and law-enforcement services, establishment of a fund to assure the*
125 *adequacy of maintenance expenditure, and a reasonable return investment in the private entity.*

126 *F. The use of any excess user fees may be negotiated between the parties.*

127 *G. After expiration of the lease of a facility to a private entity, the public body may continue to*
128 *charge user fees for the use of the facility, with these revenues to be used for operations and*
129 *maintenance of the facility, or to be paid to local agencies, or any combination of such uses.*