

# VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

## CHAPTER 593

*An Act to amend and reenact §§ 56-557, 56-565, and 56-573.1 of the Code of Virginia, relating to the Public-Private Transportation Act of 1995; imposition of tolls for the use of Interstate Route 81 by vehicles other than passenger cars, pickup or panel trucks, and motorcycles; procurement.*

[H 1373]

Approved April 6, 2002

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 56-557, 56-565, and 56-573.1 of the Code of Virginia are amended and reenacted as follows:**

§ 56-557. 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.

"Asset management" means a systematic process of operating and maintaining the state system of highways by combining engineering practices and analyses with sound business practices and economic theory to achieve cost-effective outcomes.

"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.

"Maintenance" means that term as defined in § 33.1-23.02.

"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 service company.

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

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

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

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

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

"State" means the Commonwealth of Virginia.

"Transportation facility" means any road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility or similar commercial facility used for the transportation of persons or goods, together with any other property that is needed to operate the transportation facility.

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

§ 56-565. Powers and duties of the operator.

A. The operator shall have all power allowed by law generally to a private entity having the same form of organization as the operator and shall have the power to acquire, construct, improve or operate the qualifying transportation facility and impose user fees and/or enter into service contracts in connection with the use thereof. ~~No tolls or user fees may be imposed by the operator on any existing interstate highway. Furthermore,~~ No tolls or user fees may be imposed by the operator on any free road, bridge, tunnel or overpass unless such road, *interstate highway*, bridge, tunnel or overpass is reconstructed to provide for increased capacity.

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

C. Any financing of the qualifying transportation facility may be in such amounts and upon such terms and conditions as may be determined by the operator. Without limiting the generality of the foregoing, the operator may issue debt, equity or other securities or obligations, enter into sale and leaseback transactions and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying transportation facility.

D. 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 then current navigation and use of the waterway.

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

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

F. The operator shall:

1. Acquire, construct, improve, maintain and/or operate the qualifying transportation facility in a manner that meets the engineering standards of the responsible public entity for transportation facilities operated and maintained by such responsible public entity, all in accordance with the provisions of the comprehensive agreement;
2. Keep the qualifying transportation facility open for use by the members of the public at all times after its initial opening upon payment of the applicable user fees, except when exempted by § 33.1-252, and/or service payments; provided that the qualifying transportation facility may be temporarily closed because of emergencies or, with the consent of the responsible public entity, to protect the safety of the public or for reasonable construction or maintenance procedures;
3. Maintain, or provide by contract for the maintenance of, the qualifying transportation facility;
4. Cooperate with the responsible public entity in establishing any interconnection with the qualifying transportation facility requested by the responsible public entity; and
5. Comply with the provisions of the comprehensive agreement and any service contract.

§ 56-573.1. Procurement.

The Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to this chapter; however, a responsible public entity may enter into a comprehensive agreement only in accordance with procedures adopted by it ~~which~~ as follows:

1. *A responsible public entity may enter into a comprehensive agreement in accordance with procedures adopted by it that are consistent with procurement through "competitive sealed bidding" as defined in § 2.2-4301 and subsection B of § 2.2-4310; and*

2. *A responsible public entity may enter into a comprehensive agreement in accordance with procedures adopted by it that are consistent with those of ~~§ 2.2-4301~~ to the extent such section applies to the procurement of "other than professional services" through competitive negotiation as defined in § 2.2-4301 and subsection B of § 2.2-4310. Such responsible public entities shall not be required to select the proposal with the lowest price offer, but may consider price as one factor in evaluating the proposals received. A responsible public entity shall proceed in accordance with the procedures adopted by it pursuant to subdivision 1 unless it determines that proceeding in accordance with the procedures adopted by it pursuant to this subdivision is likely to be advantageous to the responsible public entity and the public, based on (i) the probable scope, complexity, or urgency of a project or (ii) risk sharing, added value, an increase in funding, or economic benefit from the project that would not otherwise be available. When the responsible public entity determines to proceed according to the procedures adopted by it pursuant to this subdivision, it shall state the reasons for its determination in writing. If a state agency is the responsible public entity, the approval of the Secretary of Transportation shall be required before the comprehensive agreement is signed.*

3. *Comprehensive agreements for maintenance or asset management services for a transportation facility that is a highway, bridge, tunnel or overpass, and any amendment or change order thereto that increases the highway lane-miles receiving services under such an agreement shall be procured in accordance with procedures that are consistent with procurement through "competitive sealed bidding" as defined in § 2.2-4301 and subsection B of § 2.2-4310. Furthermore, such contracts shall be of a size and scope to encourage maximum competition and participation by agency prequalified contractors and otherwise qualified contractors.*

4. *The provisions of subdivision 3 shall not apply to maintenance or asset management services agreed to as part of the initial provisions of any comprehensive agreement entered into for the original construction, reconstruction, or improvement of any highway pursuant to Chapter 22 (§ 56-556 et seq.) of Title 56.*

5. *Nothing in this section shall require that professional services be procured by any method other than competitive negotiation in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.).*

**2. That the provisions of this act that amend and reenact § 56-573.1 of the Code of Virginia shall not apply to any proposal submitted by a private entity prior to the effective date of this act.**

**3. That the provisions of this act to amend and reenact § 56-565 of the Code of Virginia that permit an operator to impose tolls or user fees on an existing interstate highway shall only permit the operator to impose tolls on vehicles other than passenger cars, pickup or panel trucks, and motorcycles, as such terms are defined in § 46.2-200, if the existing interstate highway the operator intends to reconstruct is Interstate 81.**