

VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 504

An Act to amend and reenact §§ 56-557 through 56-561, 56-563 through 56-572, and 56-573.1 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 56-566.1, 56-566.2, and 56-567.1, relating to the Public-Private Transportation Act of 1995.

[S 1108]

Approved March 22, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-557 through 56-561, 56-563 through 56-572, and 56-573.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 56-566.1, 56-566.2, and 56-567.1 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 *and any other responsible public entity directly affected by the qualifying transportation facility.*

"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~~ private entity and the responsible public entity required by § 56-566 of this chapter.

"Develop" or "development" means to plan, design, develop, finance, lease, acquire, install, construct, or expand.

"Interim agreement" means an agreement, including a memorandum of understanding or binding preliminary agreement, between the private entity and the responsible public entity that provides for completion of studies and any other activities to advance the development and/or operation of a qualifying transportation facility.

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

"Material default" means any default by the ~~operator~~ private entity in the performance of its duties under subsection F E 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~~ private entity and a reasonable cure period has elapsed.

"Multimodal transportation facility" means a transportation facility consisting of multiple modes of transportation.

"Operator" means the private entity that is responsible for the acquisition, construction, improvement, maintenance and/or operation of a qualifying transportation facility.

"Operate" or "operation" means to finance, maintain, improve, equip, modify, repair, or operate.

"Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, non-profit entity 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~~ developed and/or operated by a private entity pursuant to this chapter.

"Responsible public entity" means a public entity, including local governments and regional authorities, that has the power to ~~acquire, construct, improve, maintain~~ develop and/or operate the applicable qualifying transportation facility.

"Revenues" means ~~the~~ all revenues, including, but not limited to, income, earnings, user fees, lease payments, allocations, federal, state and local appropriations, bond proceeds, equity investments, and/or service payments ~~generated by~~ arising out of or in connection with supporting the development and/or operation of a qualifying transportation facility, including without limitation, money received as grants or otherwise from the United States of America, from any public entity, or from any agency or instrumentality of the foregoing in aid of such facility.

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

"Service payments" means payments to the ~~operator~~ private entity in connection with the development and/or operation 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 *buildings, structures, parking areas, appurtenances, and other property that is needed to operate the transportation such facility.*

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

§ 56-558. Policy.

A. The General Assembly finds that:

1. There is a public need for timely ~~acquisition or construction of and improvements to development and/or operation of~~ transportation facilities within the Commonwealth that *address the needs identified by the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency are compatible with state and local transportation plans and that such public need may not be wholly satisfied by existing methods of procurement in which qualifying transportation facilities are developed and/or operated;*

2. Such public need may not be wholly satisfied by existing ways in which transportation facilities are ~~acquired, constructed or improved~~ *developed and/or operated;* and

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

B. An action, other than the approval of the responsible public entity under § 56-560 of this chapter, shall serve the public purpose of this chapter if such action facilitates the timely *development of acquisition or construction of or improvement to* a qualifying transportation facility or the ~~continued~~ operation of a qualifying transportation facility.

C. It is the intent of this chapter, among other things, to ~~facilitate to the greatest extent possible, the pooling and funding mechanisms of the Intermodal Surface Transportation Efficiency Act of 1991, and any successor legislation, to the end that transportation financing be expanded and accelerated to improve and add to the convenience of the public, and such that encourage investment in the Commonwealth by private entities that facilitates the development and/or operation of transportation facilities.~~ Accordingly, public and private entities may have the greatest possible flexibility in contracting with each other for the provision of the public services which are the subject of this chapter.

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

§ 56-559. Prerequisite for operation.

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

§ 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 *in its guidelines or other instructions given, in writing, to the private entity* with respect to the transportation facility or facilities that the private entity proposes to *develop and/or* 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 proposed date for development and/or operation of the transportation facility or facilities along with an estimate of the life-cycle cost of the transportation facility as proposed;~~

4. A statement setting forth the method by which the ~~operator private entity~~ proposes to secure all any 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 *developing and/or operating* ~~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 private entity~~ to accommodate such crossings;

8. A statement setting forth the ~~operator's private entity's~~ general plans for ~~financing and developing~~ and/or operating the transportation facility or facilities, *including identification of any revenue, public or private, or proposed debt or equity investment proposed by the private entity;*

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

10. *Information on how the private entity's proposal will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency; and*

11. Such additional material and information as the responsible public entity may reasonably request pursuant to its guidelines or other written instructions.

B. The responsible public entity may request proposals from private entities for the ~~acquisition, construction, improvement development~~ and/or operation of transportation facilities. The responsible public entity shall not charge a fee to cover the costs of processing, reviewing, and evaluating proposals received in response to such requests.

C. The responsible public entity may grant approval of the ~~acquisition, construction, improvement development~~ 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 development~~ 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 *develop and/or* operate as a qualifying transportation facility;

2. The transportation facility or facilities and the proposed interconnections with existing transportation facilities, and the ~~operator's private entity's~~ plans for *development and/or* operation of the qualifying transportation facility or facilities, are, *in the opinion of the responsible public entity, reasonable and compatible with the state transportation plan and with the local comprehensive plan or plans will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency;*

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 development and/or operation 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 submitted by a private entity pursuant to subsection A, including without limitation, reasonable attorney's fees and fees for financial and other necessary advisors or consultants. *The responsible public entity shall also develop guidelines that establish the process for the acceptance and review of a proposal from a private entity pursuant to subsections A and B. Such guidelines shall establish a specific schedule for review of the proposal by the responsible public entity, a process for alteration of that schedule by the responsible public entity if it deems that changes are necessary because of the scope or complexity of proposals it receives, the process for receipt and review of competing proposals, and the type and amount of information that is necessary for adequate review of proposals in each stage of review. For qualifying transportation facilities that have approved or pending state and federal environmental clearances, secured significant right of way, have previously allocated significant state or federal funding, or exhibit other circumstances that could reasonably reduce the amount of time to develop and/or operate the qualifying transportation facility in accordance with the purpose of this act, the guidelines shall provide for a prioritized documentation, review, and selection process.*

E. The approval of the responsible public entity shall be subject to the private entity's entering into *an interim agreement or* a comprehensive agreement with the responsible public entity.

F. In connection with its approval of the *development and/or* 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.

G. *The responsible public entity shall take appropriate action, as more specifically set forth in its guidelines, to protect confidential and proprietary information provided by the private entity pursuant to an agreement under subdivision 11 of § 2.2-3705.6.*

H. *The responsible public entity may also apply for, execute, and/or endorse applications submitted by private entities to obtain federal credit assistance for qualifying projects developed and/or operated pursuant to this act.*

§ 56-561. Service contracts.

In addition to any authority otherwise conferred by law, any public entity may contract with ~~an~~

~~operator~~ a private entity 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. Affected jurisdictions.

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

B. Each affected ~~local~~ jurisdiction that is not a responsible public entity for the respective qualifying transportation facility shall, within ~~sixty~~ 60 days after receiving ~~such notice~~ a request for comments from the responsible public entity, submit any comments it may have in writing on the proposed qualifying transportation facility to the responsible public entity and indicating whether the facility is ~~compatible with the local comprehensive plan~~ will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency.

§ 56-564. Dedication of public property.

Any public entity may dedicate any property interest that it has for public use as a qualified transportation facility if it finds that so doing will serve the public purpose of this chapter. In connection with such dedication, a public entity may convey any property interest that it has, subject to the conditions imposed by general law governing such conveyances, to the ~~operator~~ private entity, subject to the provisions of this chapter, for such consideration as such public entity may determine. The aforementioned consideration may include, without limitation, the agreement of the ~~operator~~ private entity to operate the qualifying transportation facility. *The property interests that the public entity may convey to the private entity in connection with a dedication under this section may include licenses, franchises, easements, or any other right or interest the public entity deems appropriate.*

§ 56-565. Powers and duties of the private entity.

A. The ~~operator~~ private entity shall have all power allowed by law generally to a private entity having the same form of organization as the ~~operator~~ private entity and shall have the power to ~~acquire, construct, improve or develop~~ and/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 free road, bridge, tunnel or overpass unless such road, interstate highway, bridge, tunnel or overpass is reconstructed to provide for increased capacity private entity without the necessary federal, state and/or local approvals.

B. The ~~operator~~ private entity may own, lease or acquire any other right to use or *develop and/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~~ C. Subject to applicable permit requirements, the ~~operator~~ private entity 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~~ D. In operating the qualifying transportation facility, the ~~operator~~ private entity 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~~ E. The ~~operator~~ private entity shall:

1. ~~Acquire, construct, improve, maintain~~ Develop 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 *interim agreement or the comprehensive agreement*;

2. Keep the qualifying transportation facility open for use by the members of the public at all times in accordance with the terms and conditions of the *interim or comprehensive agreement* 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 *interim or comprehensive agreement* and any service contract.

§ 56-566. Comprehensive agreement.

A. Prior to ~~acquiring, constructing, improving, maintaining, developing~~ and/or operating the

qualifying transportation facility, the ~~operator~~ *private entity* shall enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement shall, *as appropriate*, provide for:

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

2. Review of plans and specifications for *the development and/or operation of* 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~~ *standards acceptable to* 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); *or* self-insurance, *each* 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~~ *private entity* 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 *in a form acceptable to the responsible public entity* on a periodic basis;

8. *Compensation to the private entity which may include a reasonable development fee, a reasonable maximum rate of return on investment, and/or reimbursement of development expenses in the event of termination for convenience by the* ~~operator~~ *responsible public entity as agreed upon between the responsible public entity and the private entity; and*

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

10. *Guaranteed cost and completion guarantees related to the development and/or operation of the qualified transportation facility and payment of damages for failure to meet the completion guarantee.*

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~~ *takes* into account any *lease payments, service payments, and compensation to* ~~allows the operator~~ *the private entity or as 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~~ *private entity* 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 except as required by agreement between the parties to preserve capacity and prevent congestion on 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.

C. In the comprehensive agreement, the responsible public entity may agree to make grants or loans ~~to the operator for the development and/or operation of the qualifying transportation facility~~ 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~~ *private entity* 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~~ *private entity* 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~~ *private entity* 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 for the development and/or operation of 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~~ *private entity* for debt reduction or they may be shared with ~~affected local jurisdictions~~ *appropriate public entities.*

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.

G. Notwithstanding any contrary provision of this chapter, a responsible public entity may enter into a comprehensive agreement with multiple private entities if the responsible public entity determines in writing that it is in the public interest to do so.

H. The comprehensive agreement may provide for the development and/or operation of phases or segments of the qualifying transportation facility.

§ 56-566.1. Interim agreement.

A. Prior to or in connection with the negotiation of the comprehensive agreement, the responsible public entity may enter into an interim agreement with the private entity proposing the development and/or operation of the facility or facilities. Such interim agreement may (i) permit the private entity to commence activities for which it may be compensated relating to the proposed qualifying transportation facility, including project planning and development, advance right-of-way acquisition, design and engineering, environmental analysis and mitigation, survey, conducting transportation and revenue studies, and ascertaining the availability of financing for the proposed facility or facilities; (ii) establish the process and timing of the negotiation of the comprehensive agreement; and (iii) contain any other provisions related to any aspect of the development and/or operation of a qualifying transportation facility that the parties may deem appropriate.

B. Notwithstanding anything to the contrary in this chapter, a responsible public entity may enter into an interim agreement with multiple private entities if the responsible public entity determines in writing that it is in the public interest to do so.

§ 56-566.2. Multiple public entities.

A. If a private entity submits a proposal pursuant to subsection A of § 56-560 to develop and/or operate a qualifying transportation facility or a multimodal transportation facility that may require approval by more than one public entity, representatives of each of the affected public entities shall, prior to acceptance of such proposal, convene and determine which public entity shall serve as the coordinating responsible public entity. Such determination shall occur within 60 days of the receipt of a proposal by the respective public entities.

B. If public entities request proposals from private entities for the development and/or operation of a qualifying transportation facility or a multimodal transportation facility pursuant to subsection B of § 56-560, the determination of which public entity shall serve as the coordinating responsible public entity shall be made prior to any request for proposals.

C. Once a determination has been made in accordance with subsections A or B, the coordinating responsible public entity and the private entity shall proceed in accordance with this chapter.

§ 56-567. Federal, state and local assistance.

A. 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 agency or instrumentality thereof.

B. The responsible public entity may agree to make grants or loans for the development and/or operation of the qualifying transportation facility from time to time from amounts received from the federal, state, or local government, or any agency or instrumentality thereof.

C. Nothing in this chapter or in an interim or comprehensive agreement entered into pursuant to this chapter shall be deemed to enlarge, diminish or affect the authority, if any, otherwise possessed by the responsible public entity to take action that would impact the debt capacity of the Commonwealth or the affected jurisdictions.

§ 56-567.1. Financing.

Any financing of a qualifying transportation facility may be in such amounts and upon such terms and conditions as may be determined by the parties to the interim or comprehensive agreement. Without limiting the generality of the foregoing, the private entity and the responsible public entity may propose to utilize any and all revenues that may be available to them and may, to the fullest extent permitted by applicable law, issue debt, equity, or other securities or obligations, enter into leases and grant and loan agreements, access any designated transportation trust funds, borrow or accept grants from any state infrastructure bank 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.

§ 56-568. Material default; remedies.

A. 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.

B. 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 *Upon the occurrence and during the continuation of material default*, 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~~ *private entity* to any person providing financing therefor and the provisions of subsection C below.

2. Any responsible public entity having the power of condemnation under state 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 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 *interim or* comprehensive agreement and exercise any other rights and remedies which may be available to it at law or in equity.

4. 3. 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 4 of § 56-566.

C. B. In the event the responsible public entity elects to take over a qualifying transportation facility pursuant to subsection B 4 of this section A, the responsible public entity ~~may~~ *shall* ~~acquire, construct, improve, develop and/or~~ 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~~ *private entity*. 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~~ *private entity's* obligations to secured parties, including the maintenance of reserves and such liens shall be correspondingly reduced and, when paid off, released. Before any 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 payments 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~~ *private entity*, 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~~ *private entity* 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~~ *private entity* from sources other than revenues.

§ 56-569. Condemnation.

A. At the request of the ~~operator~~ *private entity*, 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~~ *private entity*.

B. Except as provided in subsection A of this section, until the Commission, *after notice to the private entity and the secured parties, as may appear in the private entity's records, and an opportunity for hearing*, has entered a final declaratory judgment order under subsection A of § 56-568 that a material default has occurred and is continuing, the power of condemnation may not be exercised against a qualifying transportation facility.

C. After the entry of such final order by the Commission, any responsible public entity having the power of condemnation under state law may exercise such power of condemnation as ~~provided in subsection B 2 of § 56-568~~ in lieu of, or at any time after taking over the transportation facility pursuant to subsection B 4 subdivision A 1 of § 56-568, *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 the entry by the Commission of a final declaratory judgment order pursuant to subsection B. Any person that has provided financing for the qualifying transportation facility and the private entity, to the extent of its capital investment, may participate in the condemnation proceedings with the standing of a property owner.*

§ 56-570. Utility crossings.

The ~~operator~~ *private entity* 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~~ *private entity* 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 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 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 Commission. In such a case, the cost of the experts is to be borne by the ~~operator~~ *private entity*. *Any amount to be paid for such crossing, construction, moving or relocating of facilities shall be paid for by the private entity or any other person contractually responsible therefor under the interim or comprehensive agreement or under any other contract, license or permit. The Commission shall make a determination within 90 days of notification by the private entity that the qualifying transportation facility will cross utilities subject to the Commission's jurisdiction.*

§ 56-571. 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~~ *private entity* 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. Dedication of assets.

The responsible public entity shall terminate the ~~operator's~~ *private entity's* authority and duties under this chapter on the date set forth in the *interim or comprehensive agreement*. Upon termination, the authority and duties of the ~~operator~~ *private entity* under this chapter shall cease, and the qualifying transportation facility shall be dedicated to the responsible public entity or, if the qualifying transportation facility was initially dedicated by an affected ~~local~~ jurisdiction, to such affected local jurisdiction for public use.

§ 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 *an interim or a comprehensive agreement* only in accordance with ~~procedures~~ *guidelines* adopted by it as follows:

1. A responsible public entity may enter into *an interim or a comprehensive agreement* in accordance with ~~procedures~~ *guidelines* 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.

2. A responsible public entity may enter into *an interim or a comprehensive agreement* in accordance with ~~procedures~~ *guidelines* adopted by it that are consistent with 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 entity 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. *Other factors that may be considered include (i) the proposed cost of the qualifying transportation facility; (ii) the general reputation, qualifications, industry experience, and financial capacity of the private entity; (iii) the proposed design, operation, and feasibility of the qualifying transportation facility; (iv) the eligibility of the facility for priority selection, review, and documentation timelines under the responsible public entity's guidelines; (v) local citizen and public entity comments; (vi) benefits to the public; (vii) the private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan; (viii) the private entity's plans to employ local contractors and residents; (ix) the safety record of the private entity; (x) the ability of the facility to address the needs identified in the appropriate state, regional or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency; and (xi) other criteria that the responsible public entity deems appropriate.*

A responsible public entity shall proceed in accordance with the ~~procedures~~ *guidelines* adopted by it pursuant to subdivision 1 unless it determines that proceeding in accordance with the ~~procedures~~ *guidelines* 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 *including guaranteed cost or completion guarantees*, added value, *or debt or equity investments proposed by the private entity*; or (iii) an increase in funding, *dedicated revenue source* or other economic benefit ~~from the project~~ that would not otherwise be available. When the responsible public entity determines to proceed according to the ~~procedures~~ *guidelines* 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 *as more specifically set forth in the guidelines* before the comprehensive agreement is signed.

3. *Interim or* 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~~ *guidelines* 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 *interim or* 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. Once a comprehensive agreement has been entered into, and the process of bargaining of all phases or aspects of the comprehensive agreement is complete, a responsible public entity shall make available, upon request, procurement records in accordance with § 2.2-4342.

6. 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 Secretary of Transportation shall, no later than October 31, 2005, make revisions to the existing state guidelines to conform to the provisions of this act. Such guidelines shall apply to all agencies for which the Secretary is responsible when such agencies are responsible public entities under this act. In making his recommended changes, the Secretary shall consult with public and private entities and with the Chairmen of the Senate and House Transportation Committees. It is the intent of the General Assembly that such guidelines shall provide appropriate opportunities for public comment and facilitate the review of proposals to develop and/or operate qualifying transportation facilities in a timely manner and through innovative methods.

3. That the provisions of this act shall apply, upon agreement of the parties to an interim or comprehensive agreement, to existing qualifying transportation facilities for which, prior to January 1, 2005, a private entity has not entered into a comprehensive agreement, and to prospective qualifying transportation facilities.