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SENATE BILL NO. 541

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Rules
on March 1, 2006)

(Patron Prior to Substitute—Senator Stosch)

A BILL to amend and reenact §§ 56-575.1, 56-575.3:1, 56-575.4, and 56-575.16 of the Code of Virginia and to amend the Code of Virginia by adding in Title 30 a chapter numbered 40, consisting of sections numbered 30-266, 30-267, and 30-268; and to amend the Code of Virginia by adding in Title 30 a chapter numbered 41, consisting of sections numbered 30-269 through 30-274; and by adding in Chapter 22.1 of Title 56 sections numbered 56-575.17 and 56-575.18, relating to the Public-Private Education Facilities and Infrastructure Act; the Joint Commission on Transportation Accountability; Public-Private Partnership Advisory Commission.

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-575.1, 56-575.3:1, 56-575.4, and 56-575.16 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 30 a chapter numbered 40, consisting of sections numbered 30-266, 30-267, and 30-268; and that the Code of Virginia is amended by adding in Title 30 a chapter numbered 41, consisting of sections numbered 30-269 through 30-274; and by adding in Chapter 22.1 of Title 56 sections numbered 56-575.17 and 56-575.18 as follows:

CHAPTER 40.

PUBLIC-PRIVATE PARTNERSHIP ADVISORY COMMISSION.

§ 30-266. Definitions.

As used in this chapter:

"Commission" means the Public-Private Partnership Advisory Commission.

"Comprehensive agreement" means the same as the term is defined in the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.).

"Detailed proposal" means a proposal accepted by a responsible public entity beyond a conceptual level of review and at which time issues such as fixing costs, payment schedules, financing, deliverables, and project schedule are defined.

"Interim agreement" means the same as the term is defined in the Public-Private Education Facilities and Infrastructure Act of 2002.

"Qualifying project" means the same as the term is defined in the Public-Private Education Facilities and Infrastructure Act of 2002.

"Responsible public entity" means a public entity that is an agency or institution of the Commonwealth with the power to develop or operate a qualifying project.

§ 30-267. Public-Private Partnership Advisory Commission established; membership; terms; compensation; staff; quorum.

A. The Public-Private Partnership Advisory Commission (the Commission) is established as an advisory commission in the legislative branch. The purpose of the Commission shall be to review and advise responsible public entities that are agencies or institutions of the Commonwealth on proposals received pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.).

B. The Commission shall consist of nine members, including six legislative members, as follows: (i) the Chair of the House Committee on Appropriations or his designee and two members of the House of Delegates appointed by the Speaker of the House, (ii) the Chair of the Senate Committee on Finance or his designee and two members of the Senate appointed by the Senate Committee on Rules, and (iii) the Secretaries of Administration, Finance, and Technology or their designees. Legislative members shall serve on the Commission until the expiration of their terms of office or until their successors shall qualify. Executive branch agency members shall serve only as long as they retain their positions.

C. The members of the Commission shall elect from among the legislative membership a chairman and a vice chairman who shall serve for two-year terms. The Commission shall hold meetings quarterly or upon the call of the chairman. A majority of the Commission shall constitute a quorum.

D. Members of the Commission shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813, 2.2-2825, and 30-19.12, as appropriate.

E. Administrative staff support shall be provided by the Office of the Clerk of the Senate or the Office of the Clerk of the House of Delegates as may be appropriate for the house in which the chairman of the Commission serves. Additional assistance as needed shall be provided by the staffs of the House Committee on Appropriations, the Senate Finance Committee, and the Auditor of Public

60 Accounts.

61 F. A copy of the proceedings of the Commission shall be filed with the Division of Legislative
62 Services.

63 § 30-268. Submission of detailed proposals by responsible public entities; exclusion of certain
64 qualifying projects; review of detailed proposals; copies of interim and comprehensive agreements to be
65 provided.

66 A. Each responsible public entity receiving detailed proposals from private entities for a qualifying
67 project shall provide copies of such proposals to the Commission prior to entering into the negotiation
68 of an interim or comprehensive agreement.

69 B. The following qualifying projects shall not be subject to review by the Commission:

70 1. Any proposed qualifying project with a total cost of less than \$3 million.

71 2. Any proposed qualifying project with a total cost of more than \$3 million and less than \$50
72 million for which funds have been specifically appropriated as a public-private partnership in the
73 general appropriation act or capital construction projects that have been authorized in the
74 appropriation act, provided such project does not increase in size more than 5% beyond the plans and
75 justifications that were the basis of the appropriation. For any qualifying project that will be completed
76 in phases and for which no appropriation has been made for phases other than the current phase of the
77 project, the Commission may undertake additional reviews of such projects.

78 C. Upon receipt of a complete copy of the detailed proposals for a qualifying project, the
79 Commission shall determine whether to accept or decline such proposals for review. If the Commission
80 accepts a proposal for review, the findings and recommendations of the Commission shall be provided
81 to the responsible public entity within 45 days of receiving complete copies of the detailed proposals. If
82 no findings or recommendations are provided by the Commission to the responsible public entity within
83 the 45-day period, the Commission shall be deemed to have declined to accept the detailed proposals
84 for review. Upon acceptance for review, the responsible public entity shall provide any additional
85 information regarding the qualifying project upon the request of the Commission, provided such
86 information is available to or can be obtained by the responsible public entity.

87 D. The Commission shall review accepted detailed proposals and provide findings and
88 recommendations to the responsible public entity including (i) whether the terms and conditions of the
89 proposals and proposed qualifying project create state tax-supported debt taking into consideration the
90 specific findings of the Secretary of Finance with respect to such recommendation, (ii) an analysis of the
91 potential financial impact of the qualifying project, (iii) a review of the policy aspects of the detailed
92 proposals and the qualifying project, and (iv) proposed general business terms and conditions. Review
93 by the Commission shall not be construed to constitute approval of any appropriations necessary to
94 implement any subsequent interim or comprehensive agreement.

95 E. The responsible public entity shall not commence negotiation of an interim or comprehensive
96 agreement until the Commission has submitted its recommendations or declined to accept the detailed
97 proposals for review.

98 F. After receipt of any recommendation of the Commission, the responsible public entity shall report
99 to the Commission on the extent to which such recommendations will be addressed in the interim or
100 comprehensive agreement.

101 G. The responsible public entity shall submit a copy of the proposed interim or comprehensive
102 agreement to the Commission at least 30 days prior to execution of the agreement.

103 H. Records and information afforded the protection under subdivision 11 of § 2.2-3705.6 that are
104 provided by a responsible public entity shall continue to be protected from disclosure when in the
105 possession of the Commission.

106 CHAPTER 41.

107 JOINT COMMISSION ON TRANSPORTATION ACCOUNTABILITY.

108 § 30-269. Joint Commission on Transportation Accountability established; composition; terms;
109 compensation and expenses; office space; quorum; voting on recommendations.

110 There is hereby established in the legislative branch of state government the Joint Commission on
111 Transportation Accountability (the Commission). The Commission shall consist of six members of the
112 House of Delegates appointed by the Speaker of the House of Delegates, of whom at least three shall be
113 members of the House Committee on Transportation; four members of the Senate appointed by the
114 Senate Committee on Rules, of whom at least two shall be members of the Senate Committee on
115 Transportation; and the Auditor of Public Accounts, who shall serve as a nonvoting ex officio member.
116 Members shall serve terms coincident with their terms of office as members of the House of Delegates
117 and the Senate. Members may be reappointed for successive terms.

118 Members of the Commission shall receive such compensation as provided in § 30-19.12 and shall be
119 reimbursed for all their reasonable and necessary expenses incurred in the performance of their duties
120 as members of the Commission. Funding for the costs of compensation and expenses of the members
121 shall be provided from existing appropriations to the Commission. Adequate office space shall be

provided by the Commonwealth.

The Commission shall annually elect a chairman and a vice chairman from among its membership. Meetings of the Commission shall be held upon the call of the chairman or whenever the majority of the members so request. A majority of the members appointed to the Commission shall constitute a quorum.

§ 30-270. Director, executive staff, and personnel.

The Commission shall appoint, subject to confirmation by a majority of the members of the General Assembly, a Director and fix his duties and compensation. The Director may, with prior approval of the Commission, employ and fix the duties and compensation of an adequate staff as may be requisite to make the studies and conduct the research and budget analyses required by this chapter. The Director and the executive staff shall be appointed for a term of six years and shall consist of professional persons having experience and training in legislative budgetary procedures, management analyses, and cost accounting. The Director and any executive staff member may be removed from office for cause by a majority vote of the Commission. Such other professional personnel, consultants, advisors, and secretarial and clerical employees may be engaged upon such terms and conditions as set forth by the Commission.

§ 30-271. Powers and duties of Commission.

The Commission shall have the following powers and duties:

1. To make performance reviews of operations of state agencies with transportation responsibilities to ascertain that sums appropriated have been or are being expended for the purposes for which they were made and to evaluate the effectiveness of programs in accomplishing legislative intent;

2. To study, on a continuing basis, the operations, practices, and duties of state agencies with transportation responsibilities as they relate to efficiency in the use of space, personnel, equipment, and facilities;

3. To retain such consultants and advisors as the Commission deems necessary to evaluate financial and project management of state agencies with transportation responsibilities, including the review, prior to approval by the responsible public entity, of any comprehensive agreement executed pursuant to the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) to ensure that the interests of the Commonwealth are protected; and

4. To make such special studies of and reports on the operations and functions of state agencies with transportation responsibilities as it deems appropriate and as may be requested by the General Assembly.

§ 30-272. State agencies to furnish information and assistance.

All agencies of the Commonwealth, their staff, and employees shall provide the Commission with necessary information for the performance of its duties and afford the Commission's staff ample opportunity to observe agency operations.

§ 30-273. Payment of expenses of Commission.

The salaries, per diems, and other expenses necessary to the function of the Commission shall be payable from funds appropriated to the Commission.

§ 30-274. Access to information.

For the purpose of carrying out its duties under this chapter and notwithstanding any contrary provision of law, the Joint Commission on Transportation Accountability shall have access to the records and facilities of every agency whose operations are financed in whole or in part by state funds to the extent that such records and facilities are related to the expenditure of such funds. All such agencies shall cooperate with the Commission and, when requested, shall provide specific information in the form requested.

§ 56-575.1. 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 project is located.

"Appropriating body" means the body responsible for appropriating or authorizing funding to pay for a qualifying project.

"Commission" means the State Corporation Commission.

"Comprehensive agreement" means the comprehensive agreement between the private entity and the responsible public entity required by § 56-575.9.

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

"Interim agreement" means an agreement between a private entity and a responsible public entity that provides for phasing of the development or operation, or both, of a qualifying project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the project that constitutes activity on any part of the qualifying project.

183 "Lease payment" means any form of payment, including a land lease, by a public entity to the
184 private entity for the use of a qualifying project.

185 "Material default" means any default by the private entity in the performance of its duties under
186 subsection E of § 56-575.8 that jeopardizes adequate service to the public from a qualifying project.

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

188 "Private entity" means any natural person, corporation, general partnership, limited liability company,
189 limited partnership, joint venture, business trust, public benefit corporation, non-profit entity, or other
190 business entity.

191 "Public entity" means the Commonwealth and any agency or authority thereof, any county, city or
192 town and any other political subdivision of the Commonwealth, any public body politic and corporate,
193 or any regional entity that serves a public purpose.

194 "Qualifying project" means (i) any education facility, including, but not limited to a school building,
195 any functionally related and subordinate facility and land to a school building (including any stadium or
196 other facility primarily used for school events), and any depreciable property provided for use in a
197 school facility that is operated as part of the public school system or as an institution of higher
198 education; (ii) any building or facility that meets a public purpose and is developed or operated by or
199 for any public entity; (iii) any improvements, together with equipment, necessary to enhance public
200 safety and security of buildings to be principally used by a public entity; (iv) utility and
201 telecommunications and other communications infrastructure; (v) a recreational facility; (vi) technology
202 infrastructure *and technology services*, including, but not limited to, telecommunications, automated data
203 processing, word processing and management information systems, and related information, equipment,
204 goods and services; or (vii) any improvements necessary or desirable to any unimproved locally- or
205 state-owned real estate.

206 "Responsible public entity" means a public entity that has the power to develop or operate the
207 applicable qualifying project.

208 "Revenues" means all revenues, income, earnings, user fees, lease payments, or other service
209 payments arising out of or in connection with supporting the development or operation of a qualifying
210 project, including without limitation, money received as grants or otherwise from the United States of
211 America, from any public entity, or from any agency or instrumentality of the foregoing in aid of such
212 facility.

213 "Service contract" means a contract entered into between a public entity and the private entity
214 pursuant to § 56-575.5.

215 "Service payments" means payments to the private entity of a qualifying project pursuant to a service
216 contract.

217 "State" means the Commonwealth of Virginia.

218 "User fees" mean the rates, fees or other charges imposed by the private entity of a qualifying
219 project for use of all or a portion of such qualifying project pursuant to the comprehensive agreement
220 pursuant to § 56-575.9.

221 § 56-575.3:1. Adoption of guidelines by responsible public entities.

222 A. ~~Any~~ A responsible public entity *shall, prior to* requesting or considering a proposal for a
223 qualifying ~~facility shall project~~, adopt and make publicly available guidelines that are sufficient to enable
224 the responsible public entity to comply with this chapter. Such guidelines shall *be reasonable, encourage*
225 *competition, and* guide the selection of projects under the purview of the responsible public entity ~~and~~
226 ~~include, but not be limited to, reasonable criteria for choosing among competitive proposals and~~
227 ~~timelines for selecting proposals and negotiating an interim or comprehensive agreement.~~

228 B. Such guidelines shall ~~permit accelerated selection, review and documentation timelines for~~
229 ~~proposals involving a qualifying facility that the responsible public entity deems a priority. also include,~~
230 ~~but not be limited to, provisions for:~~

231 1. *Opportunities for competition through public notice and availability of representatives of the*
232 *responsible public entity to meet with private entities considering a proposal;*

233 2. *Reasonable criteria for choosing among competing proposals;*

234 3. *Suggested timelines for selecting proposals and negotiating an interim or comprehensive*
235 *agreement;*

236 4. *Authorization for accelerated selection and review and documentation timelines for proposals*
237 *involving a qualifying project that the responsible public entity deems a priority;*

238 5. *Financial review and analysis procedures that shall include, at a minimum, a cost-benefit analysis,*
239 *an assessment of opportunity cost, and consideration of the results of all studies and analyses related to*
240 *the proposed qualifying project. These procedures shall also include requirements for the disclosure of*
241 *such analysis to the appropriating body for review prior to finalizing either an interim or comprehensive*
242 *agreement;*

243 6. *Consideration of the nonfinancial benefits of a proposed qualifying project;*

244 7. *For responsible public entities that are not agencies and institutions of the Commonwealth, a*

mechanism for the appropriating body to review a proposed interim or comprehensive agreement before it is finalized prior to execution. For responsible public entities that are agencies and institutions of the Commonwealth, approval by the appropriating body shall be in compliance with the provisions of subsection J of § 56-575.4;

8. Establishment of criteria for (i) the creation of and the responsibilities of a public-private partnership oversight committee with members representing the responsible public entity and the appropriating body or (ii) compliance with the requirements of Chapter 40 (§ 30-266 et seq.) of Title 30. Such criteria shall include the scope, costs, and duration of the qualifying project, as well as whether the project involves or impacts multiple public entities. The oversight committee shall be an advisory committee to review the terms of any interim or comprehensive agreement;

9. Analysis of the adequacy of the information released when seeking competing proposals and providing for the enhancement of that information, if deemed necessary, to encourage competition pursuant to § 56-575.17;

10. Establishment of criteria, key decision points, and approvals required to ensure that the responsible public entity considers the extent of competition before selecting proposals and negotiating an interim or comprehensive agreement;

11. If the responsible public entity is not an agency or institution of the Commonwealth, a requirement that the responsible public entity engage the services of qualified professionals, which may include an architect, professional engineer, or certified public accountant, not otherwise employed by the responsible public entity to provide to the responsible public entity independent analysis regarding the specifics, advantages, disadvantages, and the long- and short-term costs of any request by a private entity for approval of a qualifying project unless the governing body of the responsible public entity determines that such analysis of a request by a private entity for approval of a qualifying project shall be performed by employees of the responsible public entity; and

12. The posting and publishing of public notice of a private entity's request for approval of a qualifying project including specific information and documentation to be released regarding the nature, timing, and scope of the qualifying project pursuant to subsection A of § 56-575.4 and a reasonable time period, determined by the responsible public entity to be appropriate to encourage competition and public-private partnerships pursuant to the goals of this chapter, such reasonable period not to be less than 45 days, during which time the responsible public entity will receive competing proposals pursuant to that subsection. In addition, a requirement for advertising the public notice in the Virginia Business Opportunities publication and posting a notice on the Commonwealth's electronic procurement website shall be included.

§ 56-575.4. Approval of qualifying projects by the responsible public entity.

A. A private entity may request approval of a qualifying project by the responsible public entity. Any such request shall be accompanied by the following material and information unless waived by the responsible public entity:

1. A topographic map (1:2,000 or other appropriate scale) indicating the location of the qualifying project;

2. A description of the qualifying project, including the conceptual design of such facility or facilities or a conceptual plan for the provision of services or technology infrastructure, and a schedule for the initiation of and completion of the qualifying project to include the proposed major responsibilities and timeline for activities to be performed by both the public and private entity;

3. A statement setting forth the method by which the private entity proposes to secure necessary property interests required for the qualifying project;

4. Information relating to the current plans for development of facilities or technology infrastructure to be used by a public entity that are similar to the qualifying project being proposed by the private entity, if any, of each affected local jurisdiction;

5. A list of all permits and approvals required for the qualifying project from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;

6. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the private entity to accommodate such crossings;

7. A statement setting forth the private entity's general plans for financing the qualifying project including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on the behalf of the private entity;

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

9. User fees, lease payments, and other service payments over the term of the interim or comprehensive agreement pursuant to § 56-575.9 or 56-575.9:1 and the methodology and circumstances for changes to such user fees, lease payments, and other service payments over time; and

10. Such additional material and information as the responsible public entity may reasonably request.

B. The responsible public entity may request proposals or invite bids from private entities for the development or operation of qualifying projects.

C. The responsible public entity may grant approval of the development or operation of the education facility, technology infrastructure or other public infrastructure or government facility needed by a public entity as a qualifying project, or the design or equipping of a qualifying project so developed or operated, if the responsible public entity determines that the project serves the public purpose of this chapter. The responsible public entity may determine that the development or operation of the qualifying project as a qualifying project serves such public purpose if:

1. There is a public need for or benefit derived from the qualifying project of the type the private entity proposes as a qualifying project;

2. The estimated cost of the qualifying project is reasonable in relation to similar facilities; and

3. The private entity's plans will result in the timely development or operation of the qualifying project.

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, technical, and other necessary advisors or consultants.

E. The approval of the responsible public entity shall be subject to the private entity's entering into an interim or comprehensive agreement pursuant to § 56-575.9 with the responsible public entity.

F. In connection with its approval of the qualifying project, the responsible public entity shall establish a date for the commencement of activities related to the qualifying project. The responsible public entity may extend such date from time to time.

G. The responsible public entity shall take appropriate action to protect confidential and proprietary information provided by the private entity pursuant to an agreement under subdivision 11 of § 2.2-3705.6.

H. 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.

I. Prior to entering into the negotiation of an interim or comprehensive agreement, each responsible public entity that is an agency or institution of the Commonwealth shall submit copies of detailed proposals to the Public-Private Partnership Advisory Commission as provided by § 30-268.

J. Any proposed interim or comprehensive agreement for a qualifying project where the responsible public entity is an agency or institution of the Commonwealth that (i) creates state tax-supported debt, (ii) requires a level of appropriation significantly beyond the appropriation received by the responsible public entity in the most recent appropriation act, or (iii) transforms the manner in which a service is provided among state agencies, shall be reviewed by the appropriating body prior to execution.

§ 56-575.16. Procurement.

The Virginia Public Procurement Act (§ 2.2-4300 et seq.) and any interpretations, regulations, or guidelines of the Division of Engineering and Buildings of the Department of General Services or the Virginia Information Technologies Agency, including the Capital Outlay Manual and those interpretations, regulations or guidelines developed pursuant to §§ 2.2-1131, 2.2-1132, 2.2-1133, 2.2-1149, and 2.2-1502, except those developed by the Division or the Virginia Information Technologies Agency in accordance with this chapter when the Commonwealth is the responsible public entity, shall not apply to this chapter. However, a responsible public entity may enter into a comprehensive agreement only in accordance with guidelines adopted by it as follows:

1. A responsible public entity may enter into a comprehensive agreement in accordance with 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 a comprehensive agreement in accordance with 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 facility; (ii) the general reputation, industry experience, and financial capacity of the private entity; (iii) the proposed design of the qualifying project; (iv) the eligibility of the facility for accelerated selection, review, and documentation timelines under the responsible public entity's guidelines; (v) local citizen and government 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; and (ix) other criteria that the responsible public entity deems appropriate.

A responsible public entity shall proceed in accordance with the guidelines adopted by it pursuant to subdivision 1 unless it determines that proceeding in accordance with the 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 priority of the project; (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 that would not otherwise be available. When the responsible public entity determines to proceed according to the 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 responsible Governor's Secretary, or the Governor, shall be required before the responsible public entity may enter into a comprehensive agreement pursuant to this subdivision.

3. Nothing in this chapter shall authorize or require that a responsible public entity obtain professional services through any process except in accordance with guidelines adopted by it that are consistent with the procurement of "professional services" through competitive negotiation as defined in § 2.2-4301 and subsection B of § 2.2-4310.

4. A responsible public entity shall not proceed to consider any request by a private entity for approval of a qualifying project pursuant to subsection A of § ~~56-575.4~~ until the responsible public entity has adopted and made publicly available guidelines pursuant to § 56-575.3:1 that are sufficient to enable the responsible public entity to comply with this chapter. Such guidelines shall:

a. If the responsible public entity is not an agency or authority of the Commonwealth, require the responsible public entity to engage the services of qualified professionals, which may include an architect, professional engineer or certified public accountant, not employed by the responsible public entity to provide to the responsible public entity independent analysis regarding the specifics, advantages, disadvantages, and the long- and short-term costs of any request by a private entity for approval of a qualifying project, unless the governing body of the responsible public entity determines that such analysis of a request by a private entity for approval of a qualifying project shall be performed by employees of the responsible public entity.

b. Provide for the posting and publishing of public notice of a private entity's request for approval of a qualifying project pursuant to subsection A of § ~~56-575.4~~ and a reasonable time period, determined by the responsible public entity to be appropriate to encourage competition and public-private partnerships pursuant to the goals of this chapter, such reasonable period not to be less than 45 days, during which the responsible public entity will receive competing proposals pursuant to that subsection.

Such guidelines shall also require advertising the public notice in the Virginia Business Opportunities publication and posting a notice on the Commonwealth's electronic procurement website.

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. A responsible public entity that is a school board or a county, city, or town may enter into an interim or comprehensive agreement under this chapter only with the approval of the local governing body.

§ 56-575.17. *Posting of conceptual proposals; public comment; public access to procurement records.*

A. *Conceptual proposals submitted in accordance with subsection A or B of § 56-575.4 to a responsible public entity shall be posted by the responsible public entity within 10 working days after acceptance of such proposals as follows:*

1. *For responsible public entities that are state agencies, departments, and institutions, posting shall be on the Department of General Service's web-based electronic procurement program commonly known as "eVA"; and*

2. *For responsible public entities that are local bodies, posting shall be on the responsible public entity's website or by publication, in a newspaper of general circulation in the area in which the contract is to be performed, of a summary of the proposals and the location where copies of the proposals are available for public inspection. Posting may also be on the Department of General Service's web-based electronic procurement program commonly known as "eVA," in the discretion of the local responsible public entity.*

In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Nothing in this section shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the responsible public entity so as to provide maximum notice to the public of the opportunity to inspect the proposals. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the responsible public entity and the private entity.

B. *In addition to the posting requirements of subsection A, for 30 days prior to entering into an*

429 *interim or comprehensive agreement, a responsible public entity shall provide an opportunity for public*
430 *comment on the proposals. The public comment period required by this subsection may include a public*
431 *hearing in the sole discretion of the responsible public entity. After the end of the public comment*
432 *period, no additional posting shall be required.*

433 *C. Once the negotiation phase for the development of an interim or a comprehensive agreement is*
434 *complete, but before an interim agreement or a comprehensive agreement is entered into, a responsible*
435 *public entity shall make available the proposed agreement in a manner provided in subsection A and,*
436 *for agencies and institutions of the Commonwealth, to the Public-Private Partnership Advisory*
437 *Commission established pursuant to § 30-267.*

438 *D. Once an interim agreement or a comprehensive agreement has been entered into, a responsible*
439 *public entity shall make procurement records available for public inspection, upon request. For the*
440 *purposes of this subsection, procurement records shall not be interpreted to include (i) trade secrets of*
441 *the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial*
442 *records, including balance sheets or financial statements of the private entity that are not generally*
443 *available to the public through regulatory disclosure or otherwise.*

444 *E. Cost estimates relating to a proposed procurement transaction prepared by or for a responsible*
445 *public entity shall not be open to public inspection.*

446 *F. Any inspection of procurement transaction records under this section shall be subject to*
447 *reasonable restrictions to ensure the security and integrity of the records.*

448 *G. The provisions of this section shall apply to accepted proposals regardless of whether the process*
449 *of bargaining will result in an interim or a comprehensive agreement.*

450 *§ 56-575.18. Auditor of Public Accounts.*

451 *The Auditor of Public Accounts shall periodically review interim and comprehensive agreements*
452 *entered into pursuant to this chapter to ensure compliance with the provisions of this chapter.*

453 **2. That the Chairmen of the Senate Committee on General Laws and Technology and the House**
454 **Committee on General Laws shall convene a working group of representatives of public and**
455 **private entities to revise the current model guidelines to incorporate amendments to the**
456 **Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq. of the Code**
457 **of Virginia) in accordance with this act. The group shall make its recommendations available to**
458 **the responsible public entities by September 30, 2006.**

459 **3. That the provisions of this act shall apply to proposals submitted to a responsible public entity**
460 **after July 1, 2006.**