

068963824

**SENATE BILL NO. 541**  
**FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
 (Proposed by Delegate Wardrup  
 on March 8, 2006)

(Patron Prior to Substitute—Senator Stosch)

A *BILL to amend and reenact §§ 33.1-23.03:1, 56-557, 56-558, 56-560, 56-563, 56-564, 56-566, 56-567.1, 56-573.1, 56-575.1, 56-575.3:1, 56-575.4, 56-575.16, 58.1-811, 58.1-3203, and 58.1-3703 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 through 30-270; by adding in Title 30 a chapter numbered 41, consisting of sections numbered 30-271 through 30-276; by adding a section numbered 33.1-23.03:9, by adding in Chapter 22.1 of Title 56 sections numbered 56-575.17 and 56-575.18, and by adding a section numbered 58.1-3606.1, relating to the Public-Private Transportation Act and the Public-Private Education Facilities and Infrastructure Act; concession agreements pursuant to the Public-Private Transportation Act of 1995, the taxation thereof and allocation of concession payments; Public-Private Partnership Advisory Commission.*

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

1. That §§ 33.1-23.03:1, 56-557, 56-558, 56-560, 56-563, 56-564, 56-566, 56-567.1, 56-573.1, 56-575.1, 56-575.3:1, 56-575.4, 56-575.16, 58.1-811, 58.1-3203, and 58.1-3703 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 through 30-270; by adding in Title 30 a chapter numbered 41, consisting of sections numbered 30-271 through 30-276; by adding a section numbered 33.1-23.03:9, by adding in Chapter 22.1 of Title 56 sections numbered 56-575.17 and 56-575.18, and by adding a section numbered 58.1-3606.1 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.) or the Public-Private Transportation Act of 1995 (§ 56-556 et seq.).

"Detailed proposal" means a proposal submitted pursuant to the Public-Private Education Facilities and Infrastructure Act and 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 (§ 56-575.1 et seq.) or the Public-Private Transportation Act of 1995 (§ 56-556 et seq.).

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

"Qualifying transportation facility" means the same as the term is defined in the Public-Private Transportation Act of 1995 (§ 56-556 et seq.).

"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 or qualifying transportation facility.

§ 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 (i) proposals received pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) in accordance with § 30-268 and (ii) proposed comprehensive agreements pursuant to the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) in accordance with § 30-269.

B. The Commission shall consist of 10 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, Technology, and Transportation or their designees. Legislative members shall serve on the Commission for terms coincident with their terms of office. Executive branch

60 agency members shall serve only as long as they retain their positions.

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

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

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

72 F. A copy of the proceedings of the Commission shall be filed with the Division of Legislative  
73 Services.

74 § 30-268. Submission by responsible public entities of detailed proposals for qualifying projects;  
75 exclusion of certain qualifying projects; review of detailed proposals; copies of interim and  
76 comprehensive agreements to be provided.

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

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

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

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

89 C. Upon receipt of a complete copy of the detailed proposals for a qualifying project, the  
90 Commission shall determine whether to accept or decline such proposals for review. If the Commission  
91 accepts a proposal for review, the findings and recommendations of the Commission shall be provided  
92 to the responsible public entity within 45 days of receiving complete copies of the detailed proposals. If  
93 no findings or recommendations are provided by the Commission to the responsible public entity within  
94 the 45-day period, the Commission shall be deemed to have declined to accept the detailed proposals  
95 for review. Upon acceptance for review, the responsible public entity shall provide any additional  
96 information regarding the qualifying project upon the request of the Commission, provided such  
97 information is available to or can be obtained by the responsible public entity.

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

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

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

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

114 § 30-269. Review of comprehensive agreements for qualifying transportation facilities prior to  
115 execution.

116 Prior to executing any comprehensive agreement for a qualifying transportation facility, the  
117 responsible public entity shall provide a copy of the proposed agreement and a summary containing the  
118 major business points of the agreement to the Commission. Based on the review of the agreement, the  
119 Commission may provide comment on (i) whether the terms and conditions of the agreement and  
120 proposed qualifying transportation facility create state tax-supported debt taking into consideration the  
121 specific findings of the Secretary of Finance with respect to such recommendation, (ii) the policy aspects

of the qualifying transportation facility, and (iii) proposed general business terms and conditions. The comments of the Commission, if any, shall be provided within 45 days of receiving a complete copy of the proposed comprehensive agreement.

Review by the Commission shall not be construed to constitute approval of any appropriations necessary to implement any subsequent interim or comprehensive agreement.

§ 30-270. Confidentiality of certain records submitted to the Commission.

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

#### CHAPTER 41.

##### JOINT COMMISSION ON TRANSPORTATION ACCOUNTABILITY.

§ 30-271. Joint Commission on Transportation Accountability established; composition; terms; compensation and expenses; office space; quorum; voting on recommendations.

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

Members of the Commission shall receive such compensation as provided in § 30-10.12 and shall be reimbursed for all their reasonable and necessary expenses incurred in the performance of their duties as members of the Commission. Funding for the costs of compensation and expenses of the members 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.

§ 30-272. 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.

§ 30-273. 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 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.

§ 30-274. 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.

§ 30-275. 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.

§ 30-276. 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.*

§ 33.1-23.03:1. Transportation Trust Fund.

There is hereby created in the Department of the Treasury a special nonreverting fund to be known as the Transportation Trust Fund, consisting of:

1. Funds remaining for highway construction purposes, among the several highway systems pursuant to § 33.1-23.1.

2. [Repealed.]

3. The additional revenues generated by enactments of Chapters 11, 12 and 15 of the Acts of Assembly, 1986 Special Session, and designated for this fund.

4. Tolls and other revenues derived from the projects financed or refinanced pursuant to this title which are payable into the state treasury and tolls and other revenues derived from other transportation projects, which may include upon the request of the applicable appointed governing body, as soon as their obligations have been satisfied, such tolls and revenue derived for transportation projects pursuant to § 33.1-253 (Chesapeake Bay Bridge and Tunnel District) and § 33.1-320 (Richmond Metropolitan Authority) or if the appointed governing body requests refunding or advanced refunding by the Board and such refunding or advanced refunding is approved by the General Assembly. Such funds shall be held in separate subaccounts of the Transportation Trust Fund to the extent required by law or the Board.

5. Tolls and other revenues derived from the Richmond-Petersburg Turnpike, provided that such funds shall be held in a separate subaccount of the Transportation Trust Fund and allocated as set forth in Chapter 574 of the Acts of Assembly of 1983 until expiration of that Act.

6. Such other funds as may be appropriated by the General Assembly from time to time, and designated for this fund.

7. All interest, dividends and appreciation which may accrue to the Transportation Trust Fund and the Highway Maintenance and Construction Fund, except that interest on funds becoming part of the Transportation Trust Fund under subdivision 1 and the Highway Maintenance and Construction Fund shall not become part of the Transportation Trust Fund until July 1, 1988.

8. All amounts required by contract to be paid over to the Transportation Trust Fund.

9. *Concession payments paid to the Commonwealth by a private entity pursuant to the Public-Private Transportation Act of 1995 (§ 56-556 et seq.).*

§ 33.1-23.03:9. Concession Payments Account.

A. *Concession payments to the Commonwealth deposited into the Transportation Trust Fund pursuant to subdivision 9 of § 33.1-23.03:1 from qualifying transportation facilities developed and/or operated pursuant to the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) shall be held in a separate subaccount to be designated the "Concession Payments Account," hereinafter referred to as "the Account," together with all interest, dividends, and appreciation that accrue to the Account and that are not otherwise specifically directed by law or reserved by the Board for other purposes allowed by law.*

B. *The Board may make allocations from the Account upon such terms and subject to such conditions as the Board deems appropriate, to:*

1. *Pay or finance all or part of the costs of programs or projects, including without limitation, the costs of planning, operation, maintenance, and improvements incurred in connection with the acquisition and construction of projects, provided that allocations from the Account shall be limited to programs and projects that are reasonably related to or benefit the users of the qualifying transportation facility that was the subject of a concession pursuant to the Public Private Transportation Act. The priorities of metropolitan planning organizations, planning district commissions, local governments, and transportation corridors shall be considered by the Board in making project allocations from moneys in the Account.*

2. *Repay funds from the Toll Facilities Revolving Account or the Transportation Partnership Opportunity Fund.*

3. *Pay the Board's reasonable costs and expenses incurred in the administration and management of the Account.*

C. *Concession payments to the Commonwealth for a qualifying transportation facility located within the boundaries of a rapid rail project for which a federal Record of Decision has been issued shall be held in a subaccount separate from the Concession Payments Account together with all interest, dividends, and appreciation that accrue to the subaccount. The Board may make allocations from the*

subaccount, as the Board deems appropriate, to:

1. Pay or finance all or part of the costs of planning, design, land acquisition, and improvements incurred in connection with the construction of such rapid rail project consistent with the issued federal Record of Decision, as may be revised from time to time; and

2. Upon determination by the Board that sufficient funds are or will be available to meet the schedule for construction of such rapid rail project, pay or finance all or part of the costs of planning, design, land acquisition, and improvements incurred in connection with other highway and public transportation projects within the corridor of the rapid rail project or within the boundaries of the qualifying transportation facility. In the case of highway projects, the Board shall follow an approval process generally in accordance with § 33.1-18.

D. The provisions of this section shall be liberally construed to the end that its beneficial purposes may be effectuated. Insofar as this provision is inconsistent with the provisions of any other general, special, or local law, this provision shall be controlling.

E. If any provision of this section or the application thereof to any person or circumstances is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

§ 56-557. Definitions.

As used in this chapter, unless the context requires a different meaning:

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

"Concession" means any lease, license, franchise, easement, or other binding agreement transferring rights for the use or control, in whole or in part, of a qualifying transportation facility by a responsible public entity to a private entity for a definite term during which the private entity will provide transportation-related services including, but not limited to, operations and maintenance, revenue collection, toll-collection enforcement, design, construction, and other activities that enhance throughput, reduce congestion, or otherwise manage the facility in return for the right to receive all or a portion of the revenues of the qualifying transportation facility.

"Concession payment" means a payment from a private entity to a responsible public entity in connection with the development and/or operation of a qualifying transportation facility pursuant to a concession.

"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 private entity in the performance of its duties under subsection 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 private entity and a reasonable cure period has elapsed.

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

"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 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 developed and/or operated by a private entity pursuant to this chapter.

"Responsible public entity" means a public entity, including local governments and regional

306 authorities, that has the power to develop and/or operate the qualifying transportation facility.

307 "Revenues" means all revenues, including, but not limited to, income, earnings, user fees, lease  
308 payments, allocations, federal, state, *regional*, and local appropriations *or the appropriations or other*  
309 *funds available to any political subdivision, authority, or instrumentality thereof*, bond proceeds, equity  
310 investments, and/or service payments arising out of or in connection with supporting the development  
311 and/or operation of a qualifying transportation facility, including without limitation, money received as  
312 grants or otherwise from the United States of America, from any public entity, or from any agency or  
313 instrumentality of the foregoing in aid of such facility.

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

316 "Service payments" means payments to the private entity in connection with the development and/or  
317 operation of a qualifying transportation facility pursuant to a service contract.

318 "State" means the Commonwealth of Virginia.

319 "Transportation facility" means any road, bridge, tunnel, overpass, ferry, airport, mass transit facility,  
320 vehicle parking facility, port facility or similar commercial facility used for the transportation of persons  
321 or goods, together with any buildings, structures, parking areas, appurtenances, and other property  
322 needed to operate such facility; *however, a commercial or retail use or enterprise not essential to the*  
323 *transportation of persons or goods shall not be a "transportation facility."*

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

326 § 56-558. Policy.

327 A. The General Assembly finds that:

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

333 2. Such public need may not be wholly satisfied by existing ways in which transportation facilities  
334 are developed and/or operated; and

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

338 B. An action, other than the approval of the responsible public entity under § 56-560 of this chapter,  
339 shall serve the public purpose of this chapter if such action, *including undertaking a concession*,  
340 facilitates the timely development of a ~~qualifying transportation facility or the~~ and/or operation of a  
341 qualifying transportation facility.

342 C. It is the intent of this chapter, among other things, to encourage investment in the Commonwealth  
343 by private entities that facilitates the development and/or operation of transportation facilities.  
344 Accordingly, public and private entities may have the greatest possible flexibility in contracting with  
345 each other for the provision of the public services which are the subject of this chapter.

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

347 § 56-560. Approval by the responsible public entity.

348 A. The private entity may request approval by the responsible public entity. Any such request shall  
349 be accompanied by the following material and information unless waived by the responsible public  
350 entity in its guidelines or other instructions given, in writing, to the private entity with respect to the  
351 transportation facility or facilities that the private entity proposes to develop and/or operate as a  
352 qualifying transportation facility:

353 1. A topographic map (1:2,000 or other appropriate scale) indicating the location of the transportation  
354 facility or facilities;

355 2. A description of the transportation facility or facilities, including the conceptual design of such  
356 facility or facilities and all proposed interconnections with other transportation facilities;

357 3. The proposed date for development and/or operation of the transportation facility or facilities along  
358 with an estimate of the life-cycle cost of the transportation facility as proposed;

359 4. A statement setting forth the method by which the private entity proposes to secure any property  
360 interests required for the transportation facility or facilities;

361 5. Information relating to the current transportation plans, if any, of each affected jurisdiction;

362 6. A list of all permits and approvals required for developing and/or operating improvements to the  
363 transportation facility or facilities from local, state, or federal agencies and a projected schedule for  
364 obtaining such permits and approvals;

365 7. A list of public utility facilities, if any, that will be crossed by the transportation facility or  
366 facilities and a statement of the plans of the private entity to accommodate such crossings;

367 8. A statement setting forth the private entity's general plans for developing and/or operating the

transportation facility or facilities, including identification of any revenue, public or private, or proposed debt or equity investment *or concession* proposed by the private entity;

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

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 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 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 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 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 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 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 *developing and/or operating* the transportation facility or facilities is reasonable in relation to similar facilities; and

4. The private entity's plans will result in the timely development and/or operation of 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 chapter, 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 chapter.

§ 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 jurisdiction by furnishing a copy of its request or

429 proposal to each affected jurisdiction.

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

436 C. *Any qualifying transportation facility, title or easement to which is held by the Commonwealth or*  
437 *an agency or authority therefor and the rights to develop or operate that have been granted to the*  
438 *private entity through a concession as defined in § 56-557, shall be subject to the provisions of Title*  
439 *15.2 in the same manner as a facility of the Commonwealth, mutatis mutandis, except that such private*  
440 *entity shall comply with the provisions of subsections B and C of § 15.2-2202 as they related to the*  
441 *affected jurisdiction's comprehensive plan.*

442 § 56-564. Dedication of public property.

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

452 *Such property interest including, but not limited to, a leasehold interest in and/or rights to use real*  
453 *property constituting a qualifying transportation facility shall be considered property indirectly owned*  
454 *by a government if described in § 58.1-3606.1.*

455 § 56-566. Comprehensive agreement.

456 A. Prior to developing and/or operating the qualifying transportation facility, the private entity shall  
457 enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement  
458 shall, as appropriate, provide for:

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

462 2. Review of plans for the development and/or operation of the qualifying transportation facility by  
463 the responsible public entity and approval by the responsible public entity if the plans conform to  
464 standards acceptable to the responsible public entity;

465 3. Inspection of construction of or improvements to the qualifying transportation facility by the  
466 responsible public entity to ensure that they conform to the standards acceptable to the responsible  
467 public entity;

468 4. Maintenance of a policy or policies of public liability insurance (copies of which shall be filed  
469 with the responsible public entity accompanied by proofs of coverage) or self-insurance, each in form  
470 and amount satisfactory to the responsible public entity and reasonably sufficient to insure coverage of  
471 tort liability to the public and employees and to enable the continued operation of the qualifying  
472 transportation facility;

473 5. Monitoring of the maintenance practices of the private entity by the responsible public entity and  
474 the taking of such actions as the responsible public entity finds appropriate to ensure that the qualifying  
475 transportation facility is properly maintained;

476 6. Reimbursement to be paid to the responsible public entity for services provided by the responsible  
477 public entity;

478 7. Filing of appropriate financial statements in a form acceptable to the responsible public entity on a  
479 periodic basis;

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

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

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

488 B. The comprehensive agreement shall provide for such user fees as may be established from time to  
489 time by agreement of the parties. Any user fees shall be set at a level that takes into account any lease  
490 payments, service payments, and compensation to the private entity or as 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 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 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 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 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 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 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 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 private entity for debt reduction or they may be shared with appropriate public entities. *Any payments under a concession arrangement for which the Commonwealth is the responsible public entity shall be paid into the Transportation Trust Fund.*

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.

#### § 56-567.1. 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, *concessions*, 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.

#### § 56-573.1. 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 guidelines adopted by it as follows:

1. A responsible public entity may enter into an interim or 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 an interim or 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 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 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 urgency of a 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 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 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 *and shall not apply to any concession that, at a minimum, provides for (i) the construction, reconstruction, or improvement of any transportation facility or (ii) the operation and maintenance of any transportation facility with existing toll facilities.*

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.).

§ 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.

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

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

"Operate" 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 business entity.

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

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

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

"Revenues" means all revenues, income, earnings, user fees, lease payments, or other service payments arising out of or in connection with supporting the development or operation of a qualifying project, 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 private entity pursuant to § 56-575.5.

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

"State" means the Commonwealth of Virginia.

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

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

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

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

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

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

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

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

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

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

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;*

675 9. Analysis of the adequacy of the information released when seeking competing proposals and  
676 providing for the enhancement of that information, if deemed necessary, to encourage competition  
677 pursuant to subsection G of § 56-575.4;

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

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

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

698 § 56-575.4. Approval of qualifying projects by the responsible public entity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Once an interim agreement or a comprehensive agreement has been entered into, a responsible public entity shall make procurement records available for public inspection, upon request. For the

purposes of this subsection, procurement records shall not be interpreted to include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

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

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

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

§ 56-575.18. Auditor of Public Accounts.

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

§ 58.1-811. Exemptions.

A. The taxes imposed by §§ 58.1-801 and 58.1-807 shall not apply to any deed conveying real estate or lease of real estate:

1. To an incorporated college or other incorporated institution of learning not conducted for profit, where such real estate is intended to be used for educational purposes and not as a source of revenue or profit;

2. To an incorporated church or religious body or to the trustee or trustees of any church or religious body, or a corporation mentioned in § 57-16.1, where such real estate is intended to be used exclusively for religious purposes, or for the residence of the minister of any such church or religious body;

3. To the United States, the Commonwealth, or to any county, city, town, district or other political subdivision of the Commonwealth;

4. To the Virginia Division of the United Daughters of the Confederacy;

5. To any nonstock corporation organized exclusively for the purpose of owning or operating a hospital or hospitals not for pecuniary profit;

6. To a corporation upon its organization by persons in control of the corporation in a transaction which qualifies for nonrecognition of gain or loss pursuant to § 351 of the Internal Revenue Code as it exists at the time of the conveyance;

7. From a corporation to its stockholders upon complete or partial liquidation of the corporation in a transaction which qualifies for income tax treatment pursuant to § 331, 332, 333 or 337 of the Internal Revenue Code as it exists at the time of liquidation;

8. To the surviving or new corporation, partnership or limited liability company upon merger or consolidation of two or more corporations, partnerships or limited liability companies, or in a reorganization within the meaning of § 368 (a) (1) (C) and (F) of the Internal Revenue Code as amended;

9. To a subsidiary corporation from its parent corporation, or from a subsidiary corporation to a parent corporation, if the transaction qualifies for nonrecognition of gain or loss under the Internal Revenue Code as amended;

10. To a partnership or limited liability company, when the grantors are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company; provided that the transfer to a limited liability company is not a precursor to a transfer of control of the assets of the company to avoid recordation taxes;

11. From a partnership or limited liability company, when the grantees are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company; provided that the transfer from a limited liability company is not subsequent to a transfer of control of the assets of the company to avoid recordation taxes;

12. To trustees of a revocable inter vivos trust, when the grantors in the deed and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, when no consideration has passed between the grantor and the beneficiaries; and to the original beneficiaries of a trust from the trustees holding title under a deed in trust;

13. When the grantor is the personal representative of a decedent's estate or trustee under a will or inter vivos trust of which the decedent was the settlor, other than a security trust defined in § 55-58.1, and the sole purpose of such transfer is to comply with a devise or bequest in the decedent's will or to transfer title to one or more beneficiaries after the death of the settlor in accordance with a dispositive provision in the trust instrument; or

14. When the grantor is an organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code that is organized and operated primarily to acquire land and purchase materials to erect or rehabilitate low-cost homes on such land, which homes are sold at cost to persons who otherwise would be unable to afford to buy a home through conventional means, located in a county with a

921 population of not less than 28,500 and not more than 28,650 or a city with a population of not less than  
922 66,000 and not more than 70,000.

923 B. The taxes imposed by §§ 58.1-803 and 58.1-804 shall not apply to any deed of trust or mortgage:

924 1. Given by an incorporated college or other incorporated institution of learning not conducted for  
925 profit;

926 2. Given by the trustee or trustees of a church or religious body or given by an incorporated church  
927 or religious body, or given by a corporation mentioned in § 57-16.1;

928 3. Given by any nonstock corporation organized exclusively for the purpose of owning and/or  
929 operating a hospital or hospitals not for pecuniary profit;

930 4. Given by any local governmental entity or political subdivision of the Commonwealth to secure a  
931 debt payable to any other local governmental entity or political subdivision; or

932 5. Securing a loan made by an organization described in subdivision 14 of subsection A of this  
933 section.

934 C. The tax imposed by § 58.1-802 shall not apply to any:

935 1. Transaction described in subdivisions 6 through 13 of subsection A of this section;

936 2. Instrument or writing given to secure a debt;

937 3. Deed conveying real estate from an incorporated college or other incorporated institution of  
938 learning not conducted for profit;

939 4. Deed conveying real estate from the United States, the Commonwealth or any county, city, town,  
940 district or other political subdivision thereof;

941 5. Conveyance of real estate to the Commonwealth or any county, city, town, district or other  
942 political subdivision thereof, if such political unit is required by law to reimburse the parties taxable  
943 pursuant to § 58.1-802; or

944 6. Deed conveying real estate from the trustee or trustees of a church or religious body or from an  
945 incorporated church or religious body, or from a corporation mentioned in § 57-16.1.

946 D. No recordation tax shall be required for the recordation of any deed of gift between a grantor or  
947 grantors and a grantee or grantees when no consideration has passed between the parties. Such deed  
948 shall state therein that it is a deed of gift.

949 E. The tax imposed by § 58.1-807 shall not apply to any lease to the United States, the  
950 Commonwealth, or any county, city, town, district or other political subdivision of the Commonwealth.

951 F. The taxes imposed by §§ 58.1-801, 58.1-802, 58.1-807, 58.1-808 and 58.1-814 shall not apply to  
952 (i) any deed of gift conveying real estate or any interest therein to The Nature Conservancy or (ii) any  
953 lease of real property or any interest therein to The Nature Conservancy, where such deed of gift or  
954 lease of real estate is intended to be used exclusively for the purpose of preserving wilderness, natural  
955 or open space areas.

956 G. The words "trustee" or "trustees," as used in subdivision 2 of subsection A, subdivision 2 of  
957 subsection B, and subdivision 6 of subsection C, include the trustees mentioned in § 57-8 and the  
958 ecclesiastical officers mentioned in § 57-16.

959 H. No recordation tax levied pursuant to this chapter shall be levied on the release of a contractual  
960 right, if the release is contained within a single deed that performs more than one function, and at least  
961 one of the other functions performed by the deed is subject to the recordation tax.

962 I. *No recordation tax levied pursuant to this chapter shall be levied on a deed, lease, easement,*  
963 *release, or other document recorded in connection with a concession pursuant to the Public-Private*  
964 *Transportation Act of 1995 (§ 56-556 et seq.) or similar federal law.*

965 § 58.1-3203. Taxation of certain leasehold interests; concessions.

966 All leasehold interests in real property which is exempt from assessment for taxation from the owner  
967 shall be assessed for local taxation to the lessee. If the remaining term of the lease is fifty years or  
968 more, or the lease permits the lessee to acquire the real property for a nominal sum at the completion of  
969 the term, such leasehold interest shall be assessed as if the lessee were the owner. Otherwise, such  
970 assessment shall be reduced two percent for each year that the remainder of such term is less than fifty  
971 years; however, no such assessment shall be reduced more than eighty-five percent. If the lessee has a  
972 right to renew without the consent of the lessor, the term of such lease shall be the sum of the original  
973 lease term plus all such renewal terms.

974 When any real property is exempt from taxation under Section 6 (a) (1) or (2) or by designation  
975 under Section 6 (a) (6) of Article X of the Constitution of Virginia, the leasehold interest in such  
976 property may also be exempt from taxation, provided that the property is leased to a lessee who is  
977 exempt from taxation pursuant to § 501 (c) of the Internal Revenue Code and is used exclusively by  
978 such lessee primarily for charitable, literary, scientific, or educational purposes. No leasehold interest *or*  
979 *concession, as defined in § 56-557, of tax exempt property of a governmental agency shall be subject to*  
980 *assessment for local property tax purposes where the property is leased to a public service corporation*  
981 *or subsidiary thereof or a nonstock, nonprofit corporation whose occupation, use or operation of the tax*  
982 *exempt property is in aid of or promotes the governmental purposes set out in Chapter 10 (§ 62.1-128 et*



seq.) of Title 62.1 or to a private entity that is party to a concession agreement with a responsible public entity pursuant to the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or to similar federal law. The provisions of this section shall not apply to any leasehold interests exempted or partially exempted by other provisions of law.

§ 58.1-3606.1. *Property indirectly owned by government.*

*Property indirectly owned by the Commonwealth or any political subdivision thereof or by the United States shall include, but not be limited to, a leasehold interest or other right pursuant to a concession, as defined in § 56-557, in a transportation facility and real property acquired or constructed for the development and/or operation of the qualifying transportation facility when (i) the qualifying transportation facility is owned, or title to it is held, by the Commonwealth or any political subdivision thereof or by the United States and is being developed and/or operated pursuant to a concession under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or similar federal law and (ii) the property or leasehold interest is required to be dedicated to the Commonwealth, its political subdivision, or the United States upon the termination of the concession.*

§ 58.1-3703. Counties, cities and towns may impose local license taxes and fees; limitation of authority.

A. The governing body of any county, city or town may charge a fee for issuing a license in an amount not to exceed \$100 for any locality with a population greater than 50,000, \$50 for any locality with a population of 25,000 but no more than 50,000 and \$30 for any locality with a population smaller than 25,000. For purposes of this section, population may be based on the most current final population estimates of the Weldon Cooper Center for Public Service of the University of Virginia. Such governing body may levy and provide for the assessment and collection of county, city or town license taxes on businesses, trades, professions, occupations and callings and upon the persons, firms and corporations engaged therein within the county, city or town subject to the limitations in (i) subsection C and (ii) subsection A of § 58.1-3706, provided such tax shall not be assessed and collected on any amount of gross receipts of each business upon which a license fee is charged. Any county, city or town with a population greater than 50,000 shall reduce the fee to an amount not to exceed \$50 by January 1, 2000. The ordinance imposing such license fees and levying such license taxes shall include the provisions of § 58.1-3703.1.

B. Any county, city or town by ordinance may exempt in whole or in part from the license tax (i) the design, development or other creation of computer software for lease, sale or license and (ii) private businesses and industries entering into agreements for the establishment, installation, renovation, remodeling, or construction of satellite classrooms for grades kindergarten through three on a site owned by the business or industry and leased to the school board at no costs pursuant to § 22.1-26.1.

C. No county, city, or town shall impose a license fee or levy any license tax:

1. On any public service corporation or any motor carrier, common carrier, or other carrier of passengers or property formerly certified by the Interstate Commerce Commission or presently registered for insurance purposes with the Surface Transportation Board of the United States Department of Transportation, Federal Highway Administration, except as provided in § 58.1-3731 or as permitted by other provisions of law;

2. For selling farm or domestic products or nursery products, ornamental or otherwise, or for the planting of nursery products, as an incident to the sale thereof, outside of the regular market houses and sheds of such county, city or town, provided such products are grown or produced by the person offering them for sale;

3. Upon the privilege or right of printing or publishing any newspaper, magazine, newsletter or other publication issued daily or regularly at average intervals not exceeding three months, provided the publication's subscription sales are exempt from state sales tax, or for the privilege or right of operating or conducting any radio or television broadcasting station or service;

4. On a manufacturer for the privilege of manufacturing and selling goods, wares and merchandise at wholesale at the place of manufacture;

5. On a person engaged in the business of severing minerals from the earth for the privilege of selling the severed mineral at wholesale at the place of severance, except as provided in §§ 58.1-3712 and 58.1-3713;

6. Upon a wholesaler for the privilege of selling goods, wares and merchandise to other persons for resale unless such wholesaler has a definite place of business or store in such county, city or town. This subdivision shall not be construed as prohibiting any county, city or town from imposing a local license tax on a peddler at wholesale pursuant to § 58.1-3718;

7. Upon any person, firm or corporation for engaging in the business of renting, as the owner of such property, real property other than hotels, motels, motor lodges, auto courts, tourist courts, travel trailer parks, lodging houses, rooming houses and boardinghouses; however, any county, city or town imposing such a license tax on January 1, 1974, shall not be precluded from the levy of such tax by the

1044 provisions of this subdivision;

1045 8. [Repealed.]

1046 9. On or measured by receipts for management, accounting, or administrative services provided on a  
1047 group basis under a nonprofit cost-sharing agreement by a corporation which is an agricultural  
1048 cooperative association under the provisions of Article 2 (§ 13.1-312 et seq.) of Chapter 3 of Title 13.1,  
1049 or a member or subsidiary or affiliated association thereof, to other members of the same group. This  
1050 exemption shall not exempt any such corporation from such license or other tax measured by receipts  
1051 from outside the group;

1052 10. On or measured by receipts or purchases by an entity which is a member of an affiliated group  
1053 of entities from other members of the same affiliated group. This exclusion shall not exempt affiliated  
1054 entities from such license or other tax measured by receipts or purchases from outside the affiliated  
1055 group. This exclusion also shall not preclude a locality from levying a wholesale merchant's license tax  
1056 on an affiliated entity on those sales by the affiliated entity to a nonaffiliated entity, notwithstanding the  
1057 fact that the wholesale merchant's license tax would be based upon purchases from an affiliated entity.  
1058 Such tax shall be based on the purchase price of the goods sold to the nonaffiliated entity. As used in  
1059 this subdivision, the term "sales by the affiliated entity to a nonaffiliated entity" means sales by the  
1060 affiliated entity to a nonaffiliated entity where goods sold by the affiliated entity or its agent are  
1061 manufactured or stored in the Commonwealth prior to their delivery to the nonaffiliated entity;

1062 11. On any insurance company subject to taxation under Chapter 25 (§ 58.1-2500 et seq.) of this title  
1063 or on any agent of such company;

1064 12. On any bank or trust company subject to taxation in Chapter 12 (§ 58.1-1200 et seq.) of this  
1065 title;

1066 13. Upon a taxicab driver, if the locality has imposed a license tax upon the taxicab company for  
1067 which the taxicab driver operates;

1068 14. On any blind person operating a vending stand or other business enterprise under the jurisdiction  
1069 of the Department for the Blind and Vision Impaired, or a nominee of the Department, as set forth in  
1070 § 51.5-98;

1071 15. [Expired.]

1072 16. [Repealed.]

1073 17. On an accredited religious practitioner in the practice of the religious tenets of any church or  
1074 religious denomination. "Accredited religious practitioner" shall be defined as one who is engaged solely  
1075 in praying for others upon accreditation by such church or religious denomination;

1076 18. (a) On or measured by receipts of a charitable nonprofit organization except to the extent the  
1077 organization has receipts from an unrelated trade or business the income of which is taxable under  
1078 Internal Revenue Code § 511 et seq. For the purpose of this subdivision, "charitable nonprofit  
1079 organization" means an organization which is described in Internal Revenue Code § 501 (c) (3) and to  
1080 which contributions are deductible by the contributor under Internal Revenue Code § 170, except that  
1081 educational institutions shall be limited to schools, colleges and other similar institutions of learning.

1082 (b) On or measured by gifts, contributions, and membership dues of a nonprofit organization.  
1083 Activities conducted for consideration which are similar to activities conducted for consideration by  
1084 for-profit businesses shall be presumed to be activities that are part of a business subject to licensure.  
1085 For the purpose of this subdivision, "nonprofit organization" means an organization exempt from federal  
1086 income tax under Internal Revenue Code § 501 other than charitable nonprofit organizations;

1087 19. On any venture capital fund or other investment fund, except commissions and fees of such  
1088 funds. Gross receipts from the sale and rental of real estate and buildings remain taxable by the locality  
1089 in which the real estate is located provided the locality is otherwise authorized to tax such businesses  
1090 and rental of real estate; ~~or~~

1091 20. On total assessments paid by condominium unit owners for common expenses. "Common  
1092 expenses" and "unit owner" have the same meanings as in § 55-79.41; *or*

1093 21. *On or measured by receipts of a qualifying transportation facility directly or indirectly owned or*  
1094 *title to which is held by the Commonwealth or any political subdivision thereof or by the United States*  
1095 *as described in § 58.1-3606.1 and developed and/or operated pursuant to a concession under the*  
1096 *Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or similar federal law.*

1097 **2. That the Chairmen of the Senate Committee on General Laws and Technology and the House**  
1098 **Committee on General Laws shall convene a working group of representatives of public and**  
1099 **private entities to revise the current model guidelines to incorporate amendments to the**  
1100 **Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq. of the Code**  
1101 **of Virginia) in accordance with this act. The group shall make its recommendations available to**  
1102 **the responsible public entities by September 30, 2006.**

1103 **3. That the Secretary of Transportation shall, no later than September 30, 2006, make revisions to**  
1104 **his guidelines for implementation of the Public-Private Transportation Act to incorporate**  
1105 **amendments to the Public-Private Transportation Act of 1995 (§ 56-556 et seq. of the Code of**

1106 Virginia) in accordance with this act. Such guidelines shall apply to all agencies for which the  
1107 Secretary is responsible when such agencies are responsible public entities under the Act. In  
1108 making his recommended changes, the Secretary shall consult with public and private entities and  
1109 with the Chairmen of the Senate and House Transportation Committees.  
1110 4. That the provisions of this act shall apply to proposals for qualifying projects filed on or after  
1111 July 1, 2006.  
1112 5. That the provisions of this act shall apply, upon agreement of the parties to an interim or  
1113 comprehensive agreement, or an amendment thereto, to existing qualifying transportation facilities  
1114 for which, prior to January 1, 2005, a private entity has not entered into a comprehensive  
1115 agreement, and to prospective qualifying transportation facilities.