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HOUSE BILL NO. 1814

Offered January 9, 2013

Prefiled January 8, 2013

A BILL to amend and reenact § 56-566 of the Code of Virginia, relating to comprehensive agreements under the Public-Private Transportation Act of 1995.

 Patron—Joannou

 Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:**1. That § 56-566 of the Code of Virginia is amended and reenacted as follows:****§ 56-566. Comprehensive agreement.**

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

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

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

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

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

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

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

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

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

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

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

B. The comprehensive agreement shall provide for such user fees as may be established from time to time by agreement of the parties. Any user fees shall be set at a level that takes into account any lease 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.

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59 D. The comprehensive agreement shall incorporate the duties of the private entity under this chapter
60 and may contain such other terms and conditions that the responsible public entity determines serve the
61 public purpose of this chapter. Without limitation, the comprehensive agreement may contain provisions
62 under which the responsible public entity agrees to provide notice of default and cure rights for the
63 benefit of the private entity and the persons specified therein as providing financing for the qualifying
64 transportation facility. The comprehensive agreement may contain such other lawful terms and
65 conditions to which the private entity and the responsible public entity mutually agree, including,
66 without limitation, provisions regarding unavoidable delays or provisions providing for a loan of public
67 funds for the development and/or operation of one or more qualifying transportation facilities.

68 E. The comprehensive agreement shall provide for the distribution of any earnings in excess of the
69 maximum rate of return as negotiated in the comprehensive agreement. Without limitation, excess
70 earnings may be distributed to the Commonwealth's Transportation Trust Fund, to the responsible public
71 entity, or to the private entity for debt reduction or they may be shared with appropriate public entities.
72 Any payments under a concession arrangement for which the Commonwealth is the responsible public
73 entity shall be paid into the Transportation Trust Fund.

74 F. Any changes in the terms of the comprehensive agreement, as may be agreed upon by the parties
75 from time to time, shall be added to the comprehensive agreement by written amendment.

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

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

81 *I. No comprehensive agreement entered into pursuant to this chapter on or after July 1, 2013, shall*
82 *be valid or become operational unless it is approved by a majority vote of both houses of the General*
83 *Assembly.*