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HOUSE BILL NO. 978

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 24, 2014)

(Patron Prior to Substitute—Delegate Rust)

A *BILL to amend and reenact §§ 56-560 and 56-570 of the Code of Virginia, relating to utility crossings in Public-Private Transportation Act projects; local government utilities.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-560 and 56-570 of the Code of Virginia are amended and reenacted as follows:

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

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

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

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

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

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

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

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

7. A list of public ~~utility~~ *utility's, locality's, or political subdivision's* facilities, if any, that will be crossed by the transportation facility or facilities and a statement of the plans of the private entity to accommodate such crossings;

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.

60 In evaluating any request, the responsible public entity may rely upon internal staff reports prepared
61 by personnel familiar with the operation of similar facilities or the advice of outside advisors or
62 consultants having relevant experience.

63 D. The responsible public entity may charge a reasonable fee to cover the costs of processing,
64 reviewing, and evaluating the request submitted by a private entity pursuant to subsection A, including
65 without limitation, reasonable attorney's fees and fees for financial and other necessary advisors or
66 consultants. The responsible public entity shall also develop guidelines that establish the process for the
67 acceptance and review of a proposal from a private entity pursuant to subsections A and B. Such
68 guidelines shall establish a specific schedule for review of the proposal by the responsible public entity,
69 a process for alteration of that schedule by the responsible public entity if it deems that changes are
70 necessary because of the scope or complexity of proposals it receives, the process for receipt and review
71 of competing proposals, and the type and amount of information that is necessary for adequate review of
72 proposals in each stage of review. For qualifying transportation facilities that have approved or pending
73 state and federal environmental clearances, secured significant right of way, have previously allocated
74 significant state or federal funding, or exhibit other circumstances that could reasonably reduce the
75 amount of time to develop and/or operate the qualifying transportation facility in accordance with the
76 purpose of this chapter, the guidelines shall provide for a prioritized documentation, review, and
77 selection process.

78 E. The approval of the responsible public entity shall be subject to the private entity's entering into
79 an interim agreement or a comprehensive agreement with the responsible public entity. For any project
80 with an estimated construction cost of over \$50 million, the responsible public entity also shall require
81 the private entity to pay the costs for an independent audit of any and all traffic and cost estimates
82 associated with the private entity's proposal, as well as a review of all public costs and potential
83 liabilities to which taxpayers could be exposed (including improvements to other transportation facilities
84 that may be needed as a result of the proposal, failure by the private entity to reimburse the responsible
85 public entity for services provided, and potential risk and liability in the event the private entity defaults
86 on the comprehensive agreement or on bonds issued for the project). This independent audit shall be
87 conducted by an independent consultant selected by the responsible public entity, and all such
88 information from such review shall be fully disclosed.

89 F. In connection with its approval of the development and/or operation of the transportation facility
90 or facilities as a qualifying transportation facility, the responsible public entity shall establish a date for
91 the acquisition of or the beginning of construction of or improvements to the qualifying transportation
92 facility. The responsible public entity may extend such date from time to time.

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

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

99 **§ 56-570. Utility crossings.**

100 A. The private entity and each public service company, public utility, railroad, ~~and~~ cable television
101 provider, *locality, or political subdivision* whose facilities are to be crossed or affected shall cooperate
102 fully with the other in planning and arranging the manner of the crossing or relocation of the facilities.
103 Any such entity possessing the power of condemnation is hereby expressly granted such powers in
104 connection with the moving or relocation of facilities to be crossed by the qualifying transportation
105 facility or that must be relocated to the extent that such moving or relocation is made necessary or
106 desirable by construction of or improvements to the qualifying transportation facility, which shall be
107 construed to include construction of or improvements to temporary facilities for the purpose of providing
108 service during the period of construction or improvement.

109 B. Should the private entity and any such public service company, public utility, railroad, and cable
110 television provider not be able to agree upon a plan for the crossing or relocation, the Commission may
111 determine the manner in which the crossing or relocation is to be accomplished and any damages due
112 arising out of the crossing or relocation. The Commission may employ expert engineers who shall
113 examine the location and plans for such crossing or relocation, hear any objections and consider
114 modifications, and make a recommendation to the Commission. In such a case, the cost of the experts is
115 to be borne by the private entity. Any amount to be paid for such crossing, construction, moving or
116 relocating of facilities shall be paid for by the private entity or any other person contractually
117 responsible therefor under the interim or comprehensive agreement or under any other contract, license
118 or permit. The Commission shall make a determination within 90 days of notification by the private
119 entity that the qualifying transportation facility will cross utilities subject to the Commission's
120 jurisdiction.

121 C. *Should the private entity and any locality or political subdivision not be able to agree upon a*

122 plan for the crossing or relocation of facilities owned or operated by the locality or political
123 subdivision, then the private entity may request in writing to the Commonwealth Transportation Board
124 (Board), with a copy to the chief executive or chief administrative officer of the locality or political
125 subdivision, that the Board consider the matter pursuant to its authority in § 33.1-56, which shall apply
126 mutatis mutandis to any project pursuant to this chapter, regardless of the highway system or location
127 of the project, if the Board decides to exercise such authority, except, however, that the private entity,
128 and not the Board, shall be responsible for the costs of such crossing, construction, moving, or
129 relocation of such facilities. In the event the Board decides to exercise its authority hereunder, the
130 Board shall issue an order within 90 days of receipt of the request from the private entity.
131 D. For the purposes of this chapter, "facilities owned or operated by the local government or
132 political subdivision" means any pipes, mains, storm sewers, water lines, sanitary sewers, natural gas
133 facilities, or other structures, equipment, and appliances owned or operated by a locality or political
134 subdivision for the purpose of transmitting or distributing communications, power, electricity, light, heat,
135 gas, oil, crude products, water, steam, sewage or waste, storm water not connected with highway
136 drainage, or any other similar commodity or substance, which facilities directly or indirectly serve the
137 public.