

1 TITLE 33.2 REVISION DRAFT, CHAPTER XXX

2 CHAPTER ~~22~~ XXX.

3 PUBLIC-PRIVATE TRANSPORTATION ACT OF 1995.

4 **Drafting note: Chapter 22 (§ 56-556 et seq.) of Title 56 is relocated to Title 33.2**  
5 **because it has a more logical nexus with Transportation. Throughout the chapter, the use**  
6 **of the term "and/or," a grammatical shortcut that often leads to confusion or ambiguity,**  
7 **has been amended to reflect its meaning: "and" in the sense of all, inclusive; "or" in the**  
8 **sense of either or both/all.**

9 ~~§ 56-556. Title.~~

10 ~~This chapter may be cited as the "Public-Private Transportation Act of 1995."~~

11 **Drafting note: This section is deleted as unnecessary because of the title-wide**  
12 **application of § 1-244, which states that the caption of a subtitle, chapter, or article serves**  
13 **as a short title citation.**

14 ~~§ 56-557~~ 33.2-917. Definitions.

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

16 "Affected-~~jurisdiction~~ locality or entity" means any county, city, or town in which all or  
17 a portion of a qualifying transportation facility is located and any other responsible public entity  
18 directly affected by the qualifying transportation facility.

19 ~~"Asset management" means a systematic process of operating and maintaining the state~~  
20 ~~system of highways by combining engineering practices and analyses with sound business~~  
21 ~~practices and economic theory to achieve cost-effective outcomes.~~

22 "Commission" means the State Corporation Commission.

23 "Comprehensive agreement" means the comprehensive agreement between the private  
24 entity and the responsible public entity required by § ~~56-566 of this chapter~~ 33.2-935.

25 "Concession" means any lease, license, franchise, easement, or other binding agreement  
26 transferring rights for the use or control, in whole or in part, of a qualifying transportation

27 facility by a responsible public entity to a private entity for a definite term during which the  
28 private entity will provide transportation-related services, including, ~~but not limited to,~~  
29 operations and maintenance, revenue collection, toll-collection enforcement, design,  
30 construction, and other activities that enhance throughput, reduce congestion, or otherwise  
31 manage the facility, in return for the right to receive all or a portion of the revenues of the  
32 qualifying transportation facility.

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

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

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

42 "Maintenance" means that term as defined in § ~~33.1-23.02~~ 33.2-XXX.

43 "Material default" means any default by the private entity in the performance of its  
44 duties under subsection E of § ~~56-565 of this chapter~~ 33.2-924 that jeopardizes adequate service  
45 to the public from a qualifying transportation facility and remains unremedied after the  
46 responsible public entity has provided notice to the private entity and a reasonable cure period  
47 has elapsed.

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

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

52 "Private entity" means any natural person, corporation, general partnership, limited  
53 liability company, limited partnership, joint venture, business trust, public benefit corporation,  
54 ~~non-profit~~ nonprofit entity, or other business entity.

55 "Public entity" means the Commonwealth and any agency or authority thereof; any  
56 county, city, or town; and any other political subdivision of any of the foregoing, but ~~shall~~ does  
57 not include any public service company.

58 "Qualifying transportation facility" means one or more transportation facilities  
59 developed ~~and/or~~ or operated by a private entity pursuant to this chapter.

60 "Responsible public entity" means a public entity, including local governments and  
61 regional authorities, that has the power to develop ~~and/or~~ or operate the qualifying  
62 transportation facility.

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

71 "Service contract" means a contract entered into between a public entity and the private  
72 entity pursuant to ~~§ 56-561 of this chapter~~ 33.2-XXX.

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

76 ~~"State" means the Commonwealth of Virginia.~~

77 "Transportation facility" means any road, bridge, tunnel, overpass, ferry, airport, mass  
78 transit facility, vehicle parking facility, port facility, or similar commercial facility used for the  
79 transportation of persons or goods, together with any buildings, structures, parking areas,  
80 appurtenances, and other property needed to operate such facility; however, "transportation  
81 facility" does not include a commercial or retail use or enterprise not essential to the  
82 transportation of persons or goods ~~shall not be a "transportation facility."~~

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

86 **Drafting note: "Affected jurisdiction" is changed to "affected locality or entity" to**  
87 **comport with practice throughout this title. The reference to a locality means a county,**  
88 **city, or town and is the correct usage within transportation. The term "jurisdiction" is**  
89 **used to mean "authority over." The definition for "asset management" is stricken because**  
90 **it is defined for the title in proposed § 33.2-100. The definition of "state" is stricken**  
91 **according to the preferred use of the term "the Commonwealth." The phrases "but not**  
92 **limited to" and "without limitation" in the definitions of "concession" and "revenues" are**  
93 **removed based on § 1-218, which states: "'Includes' means includes, but not limited to."**  
94 **Other changes are technical or made to comport with current practice.**

95 § ~~56-558~~ 33.2-918. Policy.

96 A. The General Assembly finds that:

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

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

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

109           B. An action, other than the approval of the responsible public entity under §~~56-560~~ of  
110 ~~this chapter 33.2-XXX~~, shall serve the public purpose of this chapter if such action, including  
111 undertaking a concession, facilitates the timely development~~and/or~~ or operation of a qualifying  
112 transportation facility.

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

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

119           **Drafting note: This section is currently set out. In furtherance of the general policy**  
120 **of the Virginia Code Commission to include in the Code only provisions having general**  
121 **and permanent application and not those regarding policy and purpose, recommend that**  
122 **this section not be set out. The working group was not unanimous in this recommendation.**  
123 **Technical changes are made.**

124           §~~56-559~~ 33.2-919. Prerequisite for operation.

125           A. Any private entity seeking authorization under this chapter to develop~~and/or~~ or  
126 operate a transportation facility shall first obtain approval of the responsible public entity under  
127 §~~56-560~~ 33.2-920. Such private entity may initiate the approval process by requesting approval

128 pursuant to subsection A of § ~~56-560~~ 33.2-920, or the responsible public entity may request  
129 proposals pursuant to subsection B of § ~~56-560~~ 33.2-920.

130 B. Any responsible public entity that is an agency or institution of the Commonwealth  
131 receiving a detailed proposal from a private entity for a qualifying transportation facility that is a  
132 port facility as defined in § 62.1-140 shall provide notice of the receipt of such proposal to the  
133 Public-Private Partnership Advisory Commission established in § 30-279.

134 **Drafting note: Technical changes.**

135 § ~~56-560~~ 33.2-920. Approval by the responsible public entity.

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

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

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

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

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

150 5. Information relating to the current transportation plans, if any, of each affected  
151 ~~jurisdiction~~ locality or entity;

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

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

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

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

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

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

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

172 C. The responsible public entity may grant approval of the development~~and/or~~ or  
173 operation of the transportation facility or facilities as a qualifying transportation facility if the  
174 responsible public entity determines that it serves the public purpose of this chapter. The  
175 responsible public entity may determine that the development~~and/or~~ or operation of the  
176 transportation facility or facilities as a qualifying transportation facility serves such public  
177 purpose if:

178           1. There is a public need for the transportation facility or facilities the private entity  
179 | proposes to develop ~~and/or~~ or operate as a qualifying transportation facility;

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

186           3. The estimated cost of developing ~~and/or~~ or operating the transportation facility or  
187 | facilities is reasonable in relation to similar facilities; and

188           4. The private entity's plans will result in the timely development ~~and/or~~ or operation of  
189 | the transportation facility or facilities or their more efficient operation.

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

193           D. The responsible public entity may charge a reasonable fee to cover the costs of  
194 | processing, reviewing, and evaluating the request submitted by a private entity pursuant to  
195 | subsection A, including ~~without limitation,~~ reasonable ~~attorney's~~ attorney fees and fees for  
196 | financial and other necessary advisors or consultants. The responsible public entity shall also  
197 | develop guidelines that establish the process for the acceptance and review of a proposal from a  
198 | private entity pursuant to subsections A and B. Such guidelines shall establish a specific  
199 | schedule for review of the proposal by the responsible public entity, a process for alteration of  
200 | that schedule by the responsible public entity if it deems that changes are necessary because of  
201 | the scope or complexity of proposals it receives, the process for receipt and review of competing  
202 | proposals, and the type and amount of information that is necessary for adequate review of  
203 | proposals in each stage of review. For qualifying transportation facilities that have approved or



204 pending state and federal environmental clearances, have secured significant right of way, have  
205 previously allocated significant state or federal funding, or exhibit other circumstances that  
206 could reasonably reduce the amount of time to develop ~~and/or~~ or operate the qualifying  
207 transportation facility in accordance with the purpose of this chapter, the guidelines shall  
208 provide for a prioritized documentation, review, and selection process.

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

221 F. In connection with its approval of the development ~~and/or~~ or operation of the  
222 transportation facility or facilities as a qualifying transportation facility, the responsible public  
223 entity shall establish a date for the acquisition of or the beginning of construction of or  
224 improvements to the qualifying transportation facility. The responsible public entity may extend  
225 such date from time to time.

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

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

232 **Drafting note: The term "jurisdiction" is changed to "locality" to comport with**  
233 **practice throughout this title. The reference to a locality means a county, city, or town and**  
234 **is the correct usage within transportation. The term "jurisdiction" is used to mean**  
235 **"authority over." Technical changes are made.**

236 § ~~56-561~~ 33.2-921. Service contracts.

237 In addition to any authority otherwise conferred by law, any public entity may contract  
238 with a private entity for transportation services to be provided by a qualifying transportation  
239 facility in exchange for such service payments and other consideration as such public entity may  
240 deem appropriate.

241 **Drafting note: No change.**

242 § ~~56-562~~. ~~Repealed.~~

243 **Drafting note: Repealed by Acts 1995, c. 647.**

244 § ~~56-563~~ 33.2-922. Affected ~~jurisdictions~~ localities or entities.

245 A. Any private entity requesting approval from, or submitting a proposal to, a  
246 responsible public entity under § ~~56-560~~ 33.2-920 shall notify each affected ~~jurisdiction~~ locality  
247 or entity by furnishing a copy of its request or proposal to each affected ~~jurisdiction~~ locality or  
248 entity.

249 B. Each affected ~~jurisdiction~~ locality or entity that is not a responsible public entity for  
250 the respective qualifying transportation facility shall, within 60 days after receiving a request for  
251 comments from the responsible public entity, submit in writing any comments it may have ~~in~~  
252 ~~writing~~ on the proposed qualifying transportation facility to the responsible public entity and  
253 ~~indicating~~ indicate whether the facility will address the needs identified in the appropriate state,

254 regional, or local transportation plan by improving safety, reducing congestion, increasing  
255 capacity, ~~and/or~~ or enhancing economic efficiency.

256 C. Any qualifying transportation facility, title or easement to which is held by the  
257 Commonwealth or an agency or authority therefor and the rights to develop or operate which  
258 have been granted to the private entity through a concession as defined in § ~~56-557~~ 33.2-XXX,  
259 shall be subject to the provisions of Title 15.2 in the same manner as a facility of the  
260 Commonwealth, mutatis mutandis, except that such private entity shall comply with the  
261 provisions of subsections B and C of § 15.2-2202 as they relate to the affected ~~jurisdiction's~~  
262 locality's or entity's comprehensive plan.

263 **Drafting note: The term "jurisdiction" is changed to "locality" to comport with**  
264 **practice throughout this title. The reference to a locality means a county, city, or town, and**  
265 **is the correct usage within transportation. The term "jurisdiction" is used to mean**  
266 **"authority over." Technical changes are made.**

267 § ~~56-564~~ 33.2-923. Dedication of public property.

268 Any public entity may dedicate any property interest that it has for public use as a  
269 qualified transportation facility if it finds that so doing will serve the public purpose of this  
270 chapter. In connection with such dedication, a public entity may convey any property interest  
271 that it has, subject to the conditions imposed by general law governing such conveyances, to the  
272 private entity, subject to the provisions of this chapter, for such consideration as such public  
273 entity may determine. The aforementioned consideration may include, ~~without limitation,~~  
274 agreement of the private entity to develop ~~and/or~~ or operate the qualifying transportation  
275 facility. The property interests that the public entity may convey to the private entity in  
276 connection with a dedication under this section may include licenses, franchises, easements,  
277 concessions, or any other right or interest the public entity deems appropriate. Such property  
278 interest including, ~~but not limited to,~~ a leasehold interest in ~~and/or~~ or rights to use real property

279 constituting a qualifying transportation facility shall be considered property indirectly owned by  
280 a government if described in § 58.1-3606.1.

281 **Drafting note: The phrases "without limitation" and "but not limited to" are**  
282 **removed based on § 1-218, which states: "'Includes' means includes, but not limited to."**  
283 **Other technical changes are made.**

284 § ~~56-565~~ 33.2-924. Powers and duties of the private entity.

285 A. The private entity shall have all power allowed by law generally to a private entity  
286 having the same form of organization as the private entity and shall have the power to develop  
287 ~~and/or~~ or operate the qualifying transportation facility and impose user fees ~~and/or~~ or enter into  
288 service contracts in connection with the use thereof. However, no tolls or user fees may be  
289 imposed by the private entity on any existing rural Interstate highway without the prior approval  
290 of the General Assembly if the affected Interstate System component is Interstate Route 81.

291 B. The private entity may own, lease, or acquire any other right to use ~~or~~ develop  
292 ~~and/or~~ or operate the qualifying transportation facility.

293 C. Subject to applicable permit requirements, the private entity shall have the authority  
294 to cross any canal or navigable watercourse so long as the crossing does not unreasonably  
295 interfere with then current navigation and use of the waterway.

296 D. In operating the qualifying transportation facility, the private entity may:

297 1. Make classifications according to reasonable categories for assessment of user fees;

298 and

299 2. With the consent of the responsible public entity, make and enforce reasonable rules  
300 to the same extent that the responsible public entity may make and enforce rules with respect to  
301 a similar transportation facility.

302 E. The private entity shall:

303 1. Develop ~~and/or~~ or operate the qualifying transportation facility in a manner that meets  
304 the standards of the responsible public entity for transportation facilities operated and

305 maintained by such responsible public entity, all in accordance with the provisions of the  
306 interim agreement or the comprehensive agreement;

307 2. Keep the qualifying transportation facility open for use by the members of the public  
308 in accordance with the terms and conditions of the interim or comprehensive agreement after its  
309 initial opening upon payment of the applicable user fees, ~~and/or~~ or service payments; provided  
310 that the qualifying transportation facility may be temporarily closed because of emergencies or,  
311 with the consent of the responsible public entity, to protect the safety of the public or for  
312 reasonable construction or maintenance procedures;

313 3. Maintain, or provide by contract for the maintenance of, the qualifying transportation  
314 facility;

315 4. Cooperate with the responsible public entity in establishing any interconnection with  
316 the qualifying transportation facility requested by the responsible public entity; and

317 5. Comply with the provisions of the interim or comprehensive agreement and any  
318 service contract.

319 **Drafting note: Technical changes.**

320 § ~~56-566~~ [33.2-925](#). Comprehensive agreement.

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

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

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

330           3. Inspection of construction of or improvements to the qualifying transportation facility  
331 | by the responsible public entity to ensure that ~~they such construction or improvements~~ conform  
332 to the standards acceptable to the responsible public entity;

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

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

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

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

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

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

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

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

356 account any lease payments, service payments, and compensation to the private entity or as  
357 specified in the comprehensive agreement. A copy of any service contract shall be filed with the  
358 responsible public entity. A schedule of the current user fees shall be made available by the  
359 private entity to any member of the public on request. In negotiating user fees under this section,  
360 the parties shall establish fees that are the same for persons using the facility under like  
361 conditions except as required by agreement between the parties to preserve capacity and prevent  
362 congestion on the qualifying transportation facility. The execution of the comprehensive  
363 agreement or any amendment thereto shall constitute conclusive evidence that the user fees  
364 provided for therein comply with this chapter. User fees established in the comprehensive  
365 agreement as a source of revenues may be in addition to, or in lieu of, service payments.

366 C. In the comprehensive agreement, the responsible public entity may agree to make  
367 grants or loans for the development~~and/or~~ or operation of the qualifying transportation facility  
368 from time to time from amounts received from the federal government or any agency or  
369 instrumentality thereof.

370 D. The comprehensive agreement shall incorporate the duties of the private entity under  
371 this chapter and may contain such other terms and conditions that the responsible public entity  
372 determines serve the public purpose of this chapter. Without limitation, the comprehensive  
373 agreement may contain provisions under which the responsible public entity agrees to provide  
374 notice of default and cure rights for the benefit of the private entity and the persons specified  
375 therein as providing financing for the qualifying transportation facility. The comprehensive  
376 agreement may contain such other lawful terms and conditions to which the private entity and  
377 the responsible public entity mutually agree, including, ~~without limitation,~~ provisions regarding  
378 unavoidable delays or provisions providing for a loan of public funds for the development  
379 ~~and/or~~ or operation of one or more qualifying transportation facilities.

380 E. The comprehensive agreement shall provide for the distribution of any earnings in  
381 excess of the maximum rate of return as negotiated in the comprehensive agreement. Without

382 | limitation, excess earnings may be distributed to the ~~Commonwealth's~~ Transportation Trust  
383 | Fund, to the responsible public entity, or to the private entity for debt reduction or they may be  
384 | shared with appropriate public entities. Any payments under a concession arrangement for  
385 | which the Commonwealth is the responsible public entity shall be paid into the Transportation  
386 | Trust Fund.

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

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

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

395 | **Drafting note: Changes made were to comport with current practice.**

396 | § ~~56-566-1~~ 33.2-926. Interim agreement.

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



408 B. Notwithstanding ~~anything to the contrary in any provision of~~ this chapter to the  
409 contrary, a responsible public entity may enter in to an interim agreement with multiple private  
410 entities if the responsible public entity determines in writing that it is in the public interest to do  
411 so.

412 **Drafting note: Technical changes.**

413 § ~~56-566.2~~ 33.2-927. Multiple public entities.

414 A. If a private entity submits a proposal pursuant to subsection A of § ~~56-560~~ 33.2-920  
415 to develop ~~and/or~~ or operate a qualifying transportation facility or a multimodal transportation  
416 facility that may require approval by more than one public entity, representatives of each of the  
417 affected public entities shall, prior to acceptance of such proposal, convene and determine which  
418 public entity shall serve as the coordinating responsible public entity. Such determination shall  
419 occur within 60 days of the receipt of a proposal by the respective public entities.

420 B. If public entities request proposals from private entities for the development ~~and/or~~ or  
421 operation of a qualifying transportation facility or a multimodal transportation facility pursuant  
422 to subsection B of § ~~56-560~~ 33.2-920, the determination of which public entity shall serve as the  
423 coordinating responsible public entity shall be made prior to any request for proposals.

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

427 **Drafting note: Technical changes.**

428 § ~~56-567~~ 33.2-928. Federal, state, and local assistance.

429 A. The responsible public entity may take any action to obtain federal, state, or local  
430 assistance for a qualifying transportation facility that serves the public purpose of this chapter  
431 and may enter into any contracts required to receive such federal assistance. If the responsible  
432 public entity is a state agency, any funds received from the state or federal government or any  
433 agency or instrumentality thereof shall be subject to appropriation by the General Assembly.

434 The responsible public entity may determine that it serves the public purpose of this chapter for  
435 all or any portion of the costs of a qualifying transportation facility to be paid, directly or  
436 indirectly, from the proceeds of a grant or loan made by the ~~local, state or~~ federal, state, or local  
437 government or any agency or instrumentality thereof.

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

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

445 **Drafting note: The term "jurisdiction" is changed to "locality or entity" to**  
446 **comport with practice throughout this title. The reference to a locality means a county,**  
447 **city, or town, and is the correct usage within transportation. The term "jurisdiction" is**  
448 **used to mean "authority over." Other changes made were to comport with current**  
449 **practice of ordering entities from the largest to the smallest.**

450 § ~~56-567.1~~ 33.2-929. Financing.

451 Any financing of a qualifying transportation facility may be in such amounts and upon  
452 such terms and conditions as may be determined by the parties to the interim or comprehensive  
453 agreement. Without limiting the generality of the foregoing, the private entity and the  
454 responsible public entity may propose to utilize any and all revenues that may be available to  
455 them and may, to the fullest extent permitted by applicable law, ~~;~~ issue debt, equity, or other  
456 securities or obligations, ~~;~~ enter into leases, concessions, and grant and loan agreements, ~~;~~ access  
457 any designated transportation trust funds, ~~;~~ borrow or accept grants from any state infrastructure  
458 bank, ~~;~~ and secure any financing with a pledge of, security interest in, or lien on, any or all of its  
459 property, including all of its property interests in the qualifying transportation facility.

460           **Drafting note: Technical changes are made including reorganization through**  
461 **punctuation for clarity.**

462           § ~~56-568~~ 33.2-930. Material default; remedies.

463           A. Upon the occurrence and during the continuation of material default, the responsible  
464 public entity may exercise any or all of the following remedies:

465           1. The responsible public entity may elect to take over the transportation facility or  
466 facilities and in such case ~~it~~ shall succeed to all of the right, title, and interest in such  
467 transportation facility or facilities, subject to any liens on revenues previously granted by the  
468 private entity to any person providing financing therefor.

469           2. The responsible public entity may terminate the interim or comprehensive agreement  
470 and exercise any other rights and remedies ~~which that~~ may be available ~~to it~~ at law or in equity.

471           3. The responsible public entity may make or cause to be made any appropriate claims  
472 under the performance ~~and/or or~~ payment bonds required by § ~~56-566~~ 33.2-925.

473           B. In the event the responsible public entity elects to take over a qualifying  
474 transportation facility pursuant to subsection A, the responsible public entity may develop  
475 ~~and/or or~~ operate the transportation facility, impose user fees for the use thereof, and comply  
476 with any service contracts as if it were the private entity. Any revenues that are subject to a lien  
477 shall be collected for the benefit of, and paid to, secured parties, as their interests may appear, to  
478 the extent necessary to satisfy the private entity's obligations to secured parties, including the  
479 maintenance of reserves, and such liens shall be correspondingly reduced and, when paid off,  
480 released. Before any payments to, or for the benefit of, secured parties, the responsible public  
481 entity may use revenues to pay current operation and maintenance costs of the transportation  
482 facility or facilities, including compensation to the responsible public entity for its services in  
483 operating and maintaining the qualifying transportation facility. Remaining revenues, if any,  
484 after all payments for operation and maintenance of the transportation facility or facilities, and  
485 to, or for the benefit of, secured parties, have been made, shall be paid to the private entity,

486 subject to the negotiated maximum rate of return. The right to receive such payment, if any,  
487 shall be considered just compensation for the transportation facility or facilities. The full faith  
488 and credit of the responsible public entity shall not be pledged to secure any financing of the  
489 private entity by the election to take over the qualifying transportation facility. Assumption of  
490 operation of the qualifying transportation facility shall not obligate the responsible public entity  
491 to pay any obligation of the private entity from sources other than revenues.

492 **Drafting note: Technical changes.**

493 § ~~56-569~~ 33.2-931. Condemnation.

494 A. At the request of the private entity, the responsible public entity may exercise any  
495 power of condemnation that it has under law for the purpose of acquiring any lands or estates or  
496 interests therein to the extent that the responsible public entity finds that such action serves the  
497 public purpose of this chapter. Any amounts to be paid in any such condemnation proceeding  
498 shall be paid by the private entity.

499 B. Except as provided in subsection A, until the Commission, after notice to the private  
500 entity and the secured parties, as may appear in the private entity's records, and an opportunity  
501 for hearing, has entered a final declaratory judgment that a material default has occurred and is  
502 continuing, the power of condemnation may not be exercised against a qualifying transportation  
503 facility.

504 C. After the entry of such final order by the Commission, any responsible public entity  
505 having the power of condemnation under state law may exercise such power of condemnation,  
506 in lieu of, or at any time after taking over the transportation facility pursuant to subdivision A 1  
507 of § ~~56-568~~ 33.2-930, to acquire the qualifying transportation facility or facilities. Nothing in  
508 this chapter shall be construed to limit the exercise of the power of condemnation by any  
509 responsible public entity against a qualifying transportation facility after the entry by the  
510 Commission of a final declaratory judgment order pursuant to subsection B. Any person that has  
511 provided financing for the qualifying transportation facility and the private entity, to the extent

512 of its capital investment, may participate in the condemnation proceedings with the standing of a  
513 property owner.

514 **Drafting note: Technical changes.**

515 § ~~56-570~~ [33.2-932](#). Utility crossings.

516 The private entity and each public service company, public utility, railroad, and cable  
517 television provider, whose facilities are to be crossed or affected shall cooperate fully with the  
518 other in planning and arranging the manner of the crossing or relocation of the facilities. Any  
519 such entity possessing the power of condemnation is hereby expressly granted such powers in  
520 connection with the moving or relocation of facilities to be crossed by the qualifying  
521 transportation facility or that must be relocated to the extent that such moving or relocation is  
522 made necessary or desirable by construction of or improvements to the qualifying transportation  
523 facility, which shall be construed to include construction of or improvements to temporary  
524 facilities for the purpose of providing service during the period of construction or improvement.  
525 Should the private entity and any such public service company, public utility, railroad, and cable  
526 television provider ~~not be able~~ unable to agree upon a plan for the crossing or relocation, the  
527 Commission may determine the manner in which the crossing or relocation is to be  
528 accomplished and any damages due arising out of the crossing or relocation. The Commission  
529 may employ expert engineers who shall examine the location and plans for such crossing or  
530 relocation, hear any objections and consider modifications, and make a recommendation to the  
531 Commission. In such a case, the cost of the experts is to be borne by the private entity. Any  
532 amount to be paid for such crossing, construction, moving, or ~~relocating~~ relocation of facilities  
533 shall be paid for by the private entity or any other person contractually responsible therefor  
534 under the interim or comprehensive agreement or under any other contract, license, or permit.  
535 The Commission shall make a determination within 90 days of notification by the private entity  
536 that the qualifying transportation facility will cross utilities subject to the Commission's  
537 jurisdiction.

538 **Drafting note: Technical changes.**

539 § ~~56-571~~ 33.2-933. Police powers; violations of law.

540 A. All police officers of the Commonwealth and of each affected ~~local jurisdiction,~~  
541 locality shall have the same powers and jurisdiction within the limits of such qualifying  
542 transportation facility as they have in their respective areas of jurisdiction, and such police  
543 officers shall have access to the qualifying transportation facility at any time for the purpose of  
544 exercising such powers and jurisdiction. This authority does not extend to the private offices,  
545 buildings, garages, and other improvements of the private entity to any greater degree than the  
546 police power extends to any other private buildings and improvements.

547 B. To the extent the transportation facility is a road, bridge, tunnel, overpass, or similar  
548 transportation facility for motor vehicles, the traffic and motor vehicle laws of the  
549 Commonwealth or, if applicable, any ~~local jurisdiction~~ locality shall be the same as those  
550 applying to conduct on similar transportation facilities in the Commonwealth or such ~~local~~  
551 ~~jurisdiction~~ locality. Punishment for offenses shall be as prescribed by law for conduct  
552 occurring on similar transportation facilities in the Commonwealth or such ~~local jurisdiction~~  
553 locality.

554 **Drafting note: The term "jurisdiction" is changed to "locality" or "locality or**  
555 **entity" to comport with practice throughout this title. The reference to a locality means a**  
556 **county, city, or town, and is the correct usage within transportation. The term**  
557 **"jurisdiction" is used to mean "authority over."**

558 § ~~56-572~~ 33.2-934. Dedication of assets.

559 The responsible public entity shall terminate the private entity's authority and duties  
560 under this chapter on the date set forth in the interim or comprehensive agreement. Upon  
561 termination, the authority and duties of the private entity under this chapter shall cease, and the  
562 qualifying transportation facility shall be dedicated to the responsible public entity or, if the

563 qualifying transportation facility was initially dedicated by an affected ~~jurisdiction~~ locality or  
564 entity, to such affected ~~local jurisdiction~~ locality for public use.

565 **Drafting note: The term "jurisdiction" is changed to "locality or entity" to**  
566 **comport with practice throughout this title. The reference to a locality means a county,**  
567 **city, or town, and is the correct usage within transportation. The term "jurisdiction" is**  
568 **used to mean "authority over."**

569 § ~~56-573~~ 33.2-935. Sovereign immunity.

570 Nothing in this chapter shall be construed as or deemed a waiver of the sovereign  
571 immunity of the Commonwealth, any responsible public entity, or any affected ~~local jurisdiction~~  
572 locality or any officer or employee thereof with respect to the participation in, or approval of all  
573 or any part of the qualifying transportation facility or its operation, including ~~but not limited to~~  
574 interconnection of the qualifying transportation facility with any other transportation facility.  
575 ~~Counties, cities, and towns~~ Localities in which a qualifying transportation facility is located  
576 shall possess sovereign immunity with respect to its construction and operation.

577 **Drafting note: The term "jurisdiction" is changed to "locality" to comport with**  
578 **practice throughout this title. The reference to a locality means a county, city, or town, and**  
579 **is the correct usage within transportation. The term "jurisdiction" is used to mean**  
580 **"authority over."**

581 § ~~56-573.1~~ 33.2-936. Procurement.

582 The Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to this chapter;  
583 however, a responsible public entity may enter into an interim or a comprehensive agreement  
584 only in accordance with guidelines adopted by it as follows:

585 1. A responsible public entity may enter into an interim or a comprehensive agreement in  
586 accordance with guidelines adopted by it that are consistent with procurement through  
587 "competitive sealed bidding" as defined in § 2.2-4301 and subsection B of § 2.2-4310.

588           2. A responsible public entity may enter into an interim or a comprehensive agreement in  
589 accordance with guidelines adopted by it that are consistent with the procurement of "other than  
590 professional services" through competitive negotiation as defined in § 2.2-4301 and subsection  
591 B of § 2.2-4310. Such responsible public entity shall not be required to select the proposal with  
592 the lowest price offer, but may consider price as one factor in evaluating the proposals received.  
593 Other factors that may be considered include (i) the proposed cost of the qualifying  
594 transportation facility; (ii) the general reputation, qualifications, industry experience, and  
595 financial capacity of the private entity; (iii) the proposed design, operation, and feasibility of the  
596 qualifying transportation facility; (iv) the eligibility of the facility for priority selection, review,  
597 and documentation timelines under the responsible public entity's guidelines; (v) local citizen  
598 and public entity comments; (vi) benefits to the public; (vii) the private entity's compliance with  
599 a minority business enterprise participation plan or good faith effort to comply with the goals of  
600 such plan; (viii) the private entity's plans to employ local contractors and residents; (ix) the  
601 safety record of the private entity; (x) the ability of the facility to address the needs identified in  
602 the appropriate state, regional, or local transportation plan by improving safety, reducing  
603 congestion, increasing capacity, ~~and/or~~ or enhancing economic efficiency; and (xi) other criteria  
604 that the responsible public entity deems appropriate.

605           A responsible public entity shall proceed in accordance with the guidelines adopted by it  
606 pursuant to subdivision 1 unless it determines that proceeding in accordance with the guidelines  
607 adopted by it pursuant to this subdivision is likely to be advantageous to the responsible public  
608 entity and the public, based on ~~(i)~~ (a) the probable scope, complexity, or urgency of a project;  
609 ~~(ii)~~ (b) risk sharing including guaranteed cost or completion guarantees, added value, or debt or  
610 equity investments proposed by the private entity; or ~~(iii)~~ (c) an increase in funding, dedicated  
611 revenue source, or other economic benefit that would not otherwise be available. When the  
612 responsible public entity determines to proceed according to the guidelines adopted by it  
613 pursuant to this subdivision, it shall state the reasons for its determination in writing. If a state



614 agency is the responsible public entity, the approval of the Secretary ~~of Transportation~~ shall be  
615 required as more specifically set forth in the guidelines before the comprehensive agreement is  
616 signed.

617 3. Interim or comprehensive agreements for maintenance or asset management services  
618 for a transportation facility that is a highway, bridge, tunnel, or overpass, and any amendment or  
619 change order thereto that increases the highway lane-miles receiving services under such an  
620 agreement, shall be procured in accordance with guidelines that are consistent with procurement  
621 through "competitive sealed bidding" as defined in § 2.2-4301 and subsection B of § 2.2-4310.  
622 Furthermore, such contracts shall be of a size and scope to encourage maximum competition  
623 and participation by agency prequalified contractors and otherwise qualified contractors.

624 4. The provisions of subdivision 3 shall not apply to maintenance or asset management  
625 services agreed to as part of the initial provisions of any interim or comprehensive agreement  
626 entered into for the original construction, reconstruction, or improvement of any highway  
627 pursuant to ~~Chapter 22 (§ 56-556 et seq.) of Title 56~~ [this chapter](#) and shall not apply to any  
628 concession that, at a minimum, provides for (i) the construction, reconstruction, or improvement  
629 of any transportation facility or (ii) the operation and maintenance of any transportation facility  
630 with existing toll facilities.

631 5. Nothing in this section shall require that professional services be procured by any  
632 method other than competitive negotiation in accordance with the Virginia Public Procurement  
633 Act (§ 2.2-4300 et seq.).

634 **Drafting note: Change made to comport with the definitions for this title.**

635 § ~~56-573.1:1~~ [33.2-937](#). Posting of conceptual proposals; public comment; public access  
636 to procurement records.

637 A. Conceptual proposals submitted in accordance with subsection A or B of § ~~56-560~~  
638 [33.2-920](#) to a responsible public entity shall be posted by the responsible public entity within 10  
639 working days after acceptance of such proposals as follows:

640 1. For responsible public entities that are state agencies, authorities, departments,  
641 institutions, and other units of state government, posting shall be on the Department of General  
642 Services' central electronic procurement website; and

643 2. For responsible public entities that are local public bodies, posting shall be on the  
644 responsible public entity's website or on the Department of General Services' central electronic  
645 procurement website. In addition, such public bodies may publish in a newspaper of general  
646 circulation in the area in which the contract is to be performed a summary of the proposals and  
647 the location where copies of the proposals are available for public inspection. Such local public  
648 bodies are encouraged to utilize the Department of General Services' central electronic  
649 procurement website to provide the public with centralized visibility and access to the  
650 Commonwealth's procurement opportunities.

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

658 B. In addition to the posting requirements of subsection A, for 30 days prior to entering  
659 into an interim or comprehensive agreement, a responsible public entity shall provide an  
660 opportunity for public comment on the proposals. The public comment period required by this  
661 subsection may include a public hearing in the sole discretion of the responsible public entity.  
662 After the end of the public comment period, no additional posting shall be required.

663 C. Once the negotiation phase for the development of an interim or a comprehensive  
664 agreement is complete and a decision to award has been made by a responsible public entity, the  
665 responsible public entity shall present the major business points of the interim or comprehensive

666 agreement, including the use of any public funds, to its oversight board at a regularly scheduled  
667 meeting of the board that is open to the public.

668 D. Once an interim agreement or a comprehensive agreement has been entered into, a  
669 responsible public entity shall make procurement records available for public inspection, in  
670 accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). For the purposes  
671 of this subsection, procurement records shall not be interpreted to include (i) trade secrets of the  
672 private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial  
673 records, including balance sheets or financial statements of the private entity that are not  
674 generally available to the public through regulatory disclosure or otherwise.

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

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

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

681 **Drafting note: Technical change.**

682 § ~~56-573.2~~ [33.2-938](#). Jurisdiction.

683 The Commission shall have exclusive jurisdiction to adjudicate all matters specifically  
684 committed to its jurisdiction by this chapter.

685 **Drafting note: No change.**

686 § ~~56-573.3~~ [33.2-939](#). Contributions and gifts; prohibition during approval process.

687 A. No private entity that has submitted a bid or proposal to a public entity that is an  
688 executive branch agency directly responsible to the Governor and is seeking to develop or  
689 operate a transportation facility pursuant to this chapter, and no individual who is an officer or  
690 director of such private entity, shall knowingly provide a contribution, gift, or other item with a  
691 value greater than \$50 or make an express or implied promise to make such a contribution or

692 gift to the Governor, his political action committee, or the Governor's Secretaries, if the  
693 Secretary is responsible to the Governor for an executive branch agency with jurisdiction over  
694 the matters at issue, following the submission of a proposal under this chapter until the  
695 execution of a comprehensive agreement thereunder. The provisions of this section shall apply  
696 only for any proposal or an interim or comprehensive agreement where the stated or expected  
697 value of the contract is \$5 million or more.

698 B. Any person who knowingly violates this section shall be subject to a civil penalty of  
699 \$500 or up to two times the amount of the contribution or gift, whichever is greater. The  
700 attorney for the Commonwealth shall initiate civil proceedings to enforce the civil penalties.  
701 Any civil penalties collected shall be payable to the State Treasurer for deposit to the general  
702 fund.

703 **Drafting note: No change.**

704 § ~~56-574~~ 33.2-940. Preservation of the Virginia Highway Corporation Act of 1988.

705 Nothing in this chapter shall be construed to repeal or change in any manner the Virginia  
706 Highway Corporation Act of 1988, ~~as amended~~ (§ 56-535 et seq.), as amended. Nothing in the  
707 Virginia Highway Corporation Act of 1988, as amended, shall apply to qualifying transportation  
708 facilities undertaken pursuant to the authority of this chapter.

709 **Drafting note: Technical changes.**

710 § 56-575. Severability.

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

715 Not set out. (1994, c. 855.)

716 **Drafting note: This section is a severability clause and is therefore not set out. It**  
717 **was passed as § 56-572 in Chapter 855 of the Acts of Assembly of 1994.**

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