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CHAPTER ~~22~~ XX.

PUBLIC-PRIVATE TRANSPORTATION ACT OF 1995.

Drafting note: Chapter 22 (§ 56-556 et seq.) of Title 56 is relocated to Title 33.2 because it has a more logical nexus with Transportation. Throughout the chapter, the use of the term "and/or," a grammatical shortcut that often leads to confusion or ambiguity, has been amended in a list of more than two to reflect that any combination is permitted but has been retained when used with only two options, such as "development and/or operation."

~~§ 56-556. Title.~~

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

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

~~§ 56-557~~ 33.2-xxx. Definitions.

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

"Affected-~~jurisdiction~~ locality or entity" 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~~ 33.2-xxx.

"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

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 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
41 | operation of a qualifying transportation facility.

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

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-xxx 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 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 operate the qualifying transportation
62 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;~~ service payments; or any combination
67 thereof arising out of or in connection with supporting the development and/or operation of a
68 qualifying transportation facility, including ~~without limitation,~~ money received as grants or
69 otherwise from the United States of America, from any public entity, or from any agency or
70 instrumentality of the 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 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 definitions for "asset management" and**
90 **"maintenance" are stricken because they are defined for the title in proposed § 33.2-100.**
91 **The definition of "state" is stricken according to the preferred use of the term "the**
92 **Commonwealth." The phrases "but not limited to" and "without limitation" in the**
93 **definitions of "concession" and "revenues" are removed based on § 1-218, which states:**
94 **"'Includes' means includes, but not limited to." Other changes are technical or made to**
95 **comport with current practice.**

96 § ~~56-558~~ 33.2-xxx. Policy.

97 A. The General Assembly finds that:

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

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

106 3. Authorizing private entities to develop and/or operate one or more transportation
107 facilities may result in the development and/or operation of such transportation facilities to the

108 public in a more timely, more efficient, or less costly fashion, thereby serving the public safety
109 and welfare.

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

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

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

120 **Drafting note: Technical changes are made.**

121 § ~~56-559~~ 33.2-xxx. Prerequisite for operation.

122 A. Any private entity seeking authorization under this chapter to develop and/or operate
123 a transportation facility shall first obtain approval of the responsible public entity under § ~~56-~~
124 ~~560~~ 33.2-xxx. Such private entity may initiate the approval process by requesting approval
125 pursuant to subsection A of § ~~56-560~~ 33.2-xxx or the responsible public entity may request
126 proposals pursuant to subsection B of § ~~56-560~~ 33.2-xxx.

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

131 **Drafting note: Technical changes.**

132 § ~~56-560~~ 33.2-xxx. Approval by the responsible public entity.

133 A. The private entity may request approval by the responsible public entity. Any such
134 request shall be accompanied by the following material and information unless waived by the

135 responsible public entity in its guidelines or other instructions given, in writing, to the private
136 entity with respect to the transportation facility or facilities that the private entity proposes to
137 develop and/or operate as a qualifying transportation facility:

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

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

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

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

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

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

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

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

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

160 10. Information on how the private entity's proposal will address the needs identified in
161 the appropriate state, regional, or local transportation plan by improving safety, reducing

162 congestion, increasing capacity, ~~and/or~~ enhancing economic efficiency, or any combination
163 thereof; and

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

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

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

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

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

183 3. The estimated cost of developing and/or operating the transportation facility or
184 facilities is reasonable in relation to similar facilities; and

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

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

190 D. The responsible public entity may charge a reasonable fee to cover the costs of
191 processing, reviewing, and evaluating the request submitted by a private entity pursuant to
192 subsection A, including ~~without limitation,~~ reasonable ~~attorney's~~ attorney fees and fees for
193 financial and other necessary advisors or consultants. The responsible public entity shall also
194 develop guidelines that establish the process for the acceptance and review of a proposal from a
195 private entity pursuant to subsections A and B. Such guidelines shall establish a specific
196 schedule for review of the proposal by the responsible public entity, a process for alteration of
197 that schedule by the responsible public entity if it deems that changes are necessary because of
198 the scope or complexity of proposals it receives, the process for receipt and review of competing
199 proposals, and the type and amount of information that is necessary for adequate review of
200 proposals in each stage of review. For qualifying transportation facilities that have approved or
201 pending state and federal environmental clearances, have secured significant right of way, have
202 previously allocated significant state or federal funding, or exhibit other circumstances that
203 could reasonably reduce the amount of time to develop and/or operate the qualifying
204 transportation facility in accordance with the purpose of this chapter, the guidelines shall
205 provide for a prioritized documentation, review, and selection process.

206 E. The approval of the responsible public entity shall be subject to the private entity's
207 entering into an interim agreement or a comprehensive agreement with the responsible public
208 entity. For any project with an estimated construction cost of over \$50 million, the responsible
209 public entity also shall require the private entity to pay the costs for an independent audit of any
210 and all traffic and cost estimates associated with the private entity's proposal, as well as a review
211 of all public costs and potential liabilities to which taxpayers could be exposed (including
212 improvements to other transportation facilities that may be needed as a result of the proposal,
213 failure by the private entity to reimburse the responsible public entity for services provided, and

214 potential risk and liability in the event the private entity defaults on the comprehensive
215 agreement or on bonds issued for the project). This independent audit shall be conducted by an
216 independent consultant selected by the responsible public entity, and all such information from
217 such review shall be fully disclosed.

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

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

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

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

233 | § ~~56-561~~ 33.2-xxx. Service contracts.

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

238 **Drafting note: No change.**

239 | ~~§ 56-562. Repealed.~~

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

241 | § ~~56-563~~ 33.2-xxx. Affected ~~jurisdictions~~ localities or entities.

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

246 | B. Each affected ~~jurisdiction~~ locality or entity that is not a responsible public entity for
247 | the respective qualifying transportation facility shall, within 60 days after receiving a request for
248 | comments from the responsible public entity, submit in writing any comments it may have ~~in~~
249 | ~~writing~~ on the proposed qualifying transportation facility to the responsible public entity and
250 | ~~indicating~~ indicate whether the facility will address the needs identified in the appropriate state,
251 | regional, or local transportation plan by improving safety, reducing congestion, increasing
252 | capacity, ~~and/or~~ enhancing economic efficiency, or any combination thereof.

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

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

264 | § ~~56-564~~ 33.2-xxx. Dedication of public property.

265 | Any public entity may dedicate any property interest that it has for public use as a
266 | qualified transportation facility if it finds that so doing will serve the public purpose of this
267 | chapter. In connection with such dedication, a public entity may convey any property interest

268 that it has, subject to the conditions imposed by general law governing such conveyances, to the
269 private entity, subject to the provisions of this chapter, for such consideration as such public
270 entity may determine. The aforementioned consideration may include, ~~without limitation,~~ the
271 agreement of the private entity to develop and/or operate the qualifying transportation facility.
272 The property interests that the public entity may convey to the private entity in connection with
273 a dedication under this section may include licenses, franchises, easements, concessions, or any
274 other right or interest the public entity deems appropriate. Such property interest including, ~~but~~
275 ~~not limited to,~~ a leasehold interest in and/or rights to use real property constituting a qualifying
276 transportation facility shall be considered property indirectly owned by a government if
277 described in § 58.1-3606.1.

278 **Drafting note: The phrases "without limitation" and "but not limited to" are**
279 **removed based on § 1-218, which states: "'Includes' means includes, but not limited to."**

280 **Other technical changes are made.**

281 § ~~56-565~~ 33.2-xxx. Powers and duties of the private entity.

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

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

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

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

295 1. Make classifications according to reasonable categories for assessment of user fees;
296 and

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

300 E. The private entity shall:

301 1. Develop and/or operate the qualifying transportation facility in a manner that meets
302 the standards of the responsible public entity for transportation facilities operated and
303 maintained by such responsible public entity, all in accordance with the provisions of the
304 interim agreement or the comprehensive agreement;

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

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

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

315 5. Comply with the provisions of the interim or comprehensive agreement and any
316 service contract.

317 **Drafting note: Technical changes.**

318 ~~§ 56-566.33.2-xxx~~. Comprehensive agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

368 D. The comprehensive agreement shall incorporate the duties of the private entity under
369 this chapter and may contain such other terms and conditions that the responsible public entity
370 determines serve the public purpose of this chapter. Without limitation, the comprehensive
371 agreement may contain provisions under which the responsible public entity agrees to provide
372 notice of default and cure rights for the benefit of the private entity and the persons specified
373 therein as providing financing for the qualifying transportation facility. The comprehensive
374 agreement may contain such other lawful terms and conditions to which the private entity and
375 the responsible public entity mutually agree, including, ~~without limitation,~~ provisions regarding

376 unavoidable delays or provisions providing for a loan of public funds for the development
377 and/or operation of one or more qualifying transportation facilities.

378 E. The comprehensive agreement shall provide for the distribution of any earnings in
379 excess of the maximum rate of return as negotiated in the comprehensive agreement. Without
380 limitation, excess earnings may be distributed to the ~~Commonwealth's~~ Transportation Trust
381 Fund, to the responsible public entity, or to the private entity for debt reduction or they may be
382 shared with appropriate public entities. Any payments under a concession arrangement for
383 which the Commonwealth is the responsible public entity shall be paid into the Transportation
384 Trust Fund.

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

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

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

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

394 § ~~56-566.1~~ 33.2-xxx. Interim agreement.

395 A. Prior to or in connection with the negotiation of the comprehensive agreement, the
396 responsible public entity may enter into an interim agreement with the private entity proposing
397 the development and/or operation of the facility or facilities. Such interim agreement may (i)
398 permit the private entity to commence activities for which it may be compensated relating to the
399 proposed qualifying transportation facility, including project planning and development,
400 advance right-of-way acquisition, design and engineering, environmental analysis and
401 mitigation, survey, conducting transportation and revenue studies, and ascertaining the
402 availability of financing for the proposed facility or facilities; (ii) establish the process and

403 timing of the negotiation of the comprehensive agreement; and (iii) contain any other provisions
404 related to any aspect of the development and/or operation of a qualifying transportation facility
405 that the parties may deem appropriate.

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

410 **Drafting note: Technical changes.**

411 § ~~56-566.2~~ 33.2-xxx. Multiple public entities.

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

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

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

425 **Drafting note: Technical changes.**

426 § ~~56-567~~ 33.2-xxx. Federal, state, and local assistance.

427 A. The responsible public entity may take any action to obtain federal, state, or local
428 assistance for a qualifying transportation facility that serves the public purpose of this chapter
429 and may enter into any contracts required to receive such federal assistance. If the responsible

430 public entity is a state agency, any funds received from the state or federal government or any
431 agency or instrumentality thereof shall be subject to appropriation by the General Assembly.
432 The responsible public entity may determine that it serves the public purpose of this chapter for
433 all or any portion of the costs of a qualifying transportation facility to be paid, directly or
434 indirectly, from the proceeds of a grant or loan made by the ~~local, state or~~ federal, state, or local
435 government or any agency or instrumentality thereof.

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

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

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

448 § ~~56-567.1~~ 33.2-xxx. Financing.

449 Any financing of a qualifying transportation facility may be in such amounts and upon
450 such terms and conditions as may be determined by the parties to the interim or comprehensive
451 agreement. Without limiting the generality of the foregoing, the private entity and the
452 responsible public entity may propose to utilize any and all revenues that may be available to
453 them and may, to the fullest extent permitted by applicable law, issue debt, equity, or other
454 securities or obligations, enter into leases, concessions, and grant and loan agreements, access
455 any designated transportation trust funds, borrow or accept grants from any state infrastructure

456 | bank; and secure any financing with a pledge of, security interest in, or lien on; any or all of its
457 | property, including all of its property interests in the qualifying transportation facility.

458 | **Drafting note: Technical changes are made including reorganization through**
459 | **punctuation for clarity.**

460 | § ~~56-568~~ 33.2-xxx. Material default; remedies.

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

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

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

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

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

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

491 **Drafting note: Technical changes.**

492 § ~~56-569~~ 33.2-xxx. Condemnation.

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

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

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

510 provided financing for the qualifying transportation facility and the private entity, to the extent
511 of its capital investment, may participate in the condemnation proceedings with the standing of a
512 property owner.

513 **Drafting note: Technical changes.**

514 § ~~56-570.33.2-xxx~~. Utility crossings.

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

537 **Drafting note: Technical changes.**

538 § ~~56-571~~ 33.2-xxx. Police powers; violations of law.

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

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

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

557 § ~~56-572~~ 33.2-xxx. Dedication of assets.

558 The responsible public entity shall terminate the private entity's authority and duties
559 under this chapter on the date set forth in the interim or comprehensive agreement. Upon
560 termination, the authority and duties of the private entity under this chapter shall cease, and the
561 qualifying transportation facility shall be dedicated to the responsible public entity or, if the
562 qualifying transportation facility was initially dedicated by an affected ~~jurisdiction~~ locality or
563 entity, to such affected ~~local jurisdiction~~ locality for public use.

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

568 § ~~56-573.33.2-xxx~~. Sovereign immunity.

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

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

580 § 56-573.1. (Effective until July 1, 2014) Procurement.

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

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

587 2. A responsible public entity may enter into an interim or a comprehensive agreement in
588 accordance with guidelines adopted by it that are consistent with the procurement of "other than
589 professional services" through competitive negotiation as defined in § 2.2-4301 and subsection
590 B of § 2.2-4310. Such responsible public entity shall not be required to select the proposal with

591 the lowest price offer, but may consider price as one factor in evaluating the proposals received.
592 Other factors that may be considered include (i) the proposed cost of the qualifying
593 transportation facility; (ii) the general reputation, qualifications, industry experience, and
594 financial capacity of the private entity; (iii) the proposed design, operation, and feasibility of the
595 qualifying transportation facility; (iv) the eligibility of the facility for priority selection, review,
596 and documentation timelines under the responsible public entity's guidelines; (v) local citizen
597 and public entity comments; (vi) benefits to the public; (vii) the private entity's compliance with
598 a minority business enterprise participation plan or good faith effort to comply with the goals of
599 such plan; (viii) the private entity's plans to employ local contractors and residents; (ix) the
600 safety record of the private entity; (x) the ability of the facility to address the needs identified in
601 the appropriate state, regional or local transportation plan by improving safety, reducing
602 congestion, increasing capacity, ~~and/or~~ enhancing economic efficiency, or any combination
603 thereof; and (xi) other criteria that the responsible public entity deems appropriate.

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

615 3. Interim or comprehensive agreements for maintenance or asset management services
616 for a transportation facility that is a highway, bridge, tunnel, or overpass, and any amendment or
617 change order thereto that increases the highway lane-miles receiving services under such an

618 agreement, shall be procured in accordance with guidelines that are consistent with procurement
619 through "competitive sealed bidding" as defined in § 2.2-4301 and subsection B of § 2.2-4310.
620 Furthermore, such contracts shall be of a size and scope to encourage maximum competition
621 and participation by agency prequalified contractors and otherwise qualified contractors.

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

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

632 | § ~~56-573.1~~ 33.2-xxx. (Effective July 1, 2014) Procurement.

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

636 1. A responsible public entity may enter into an interim or a comprehensive agreement in
637 accordance with guidelines adopted by it that are consistent with procurement through
638 "competitive sealed bidding" as set forth in § 2.2-4302.1 and subsection B of § 2.2-4310.

639 2. A responsible public entity may enter into an interim or a comprehensive agreement in
640 accordance with guidelines adopted by it that are consistent with the procurement of "other than
641 professional services" through competitive negotiation as set forth in § 2.2-4302.2 and
642 subsection B of § 2.2-4310. Such responsible public entity shall not be required to select the
643 proposal with the lowest price offer, but may consider price as one factor in evaluating the
644 proposals received. Other factors that may be considered include (i) the proposed cost of the

645 qualifying transportation facility; (ii) the general reputation, qualifications, industry experience,
646 and financial capacity of the private entity; (iii) the proposed design, operation, and feasibility
647 of the qualifying transportation facility; (iv) the eligibility of the facility for priority selection,
648 review, and documentation timelines under the responsible public entity's guidelines; (v) local
649 citizen and public entity comments; (vi) benefits to the public; (vii) the private entity's
650 compliance with a minority business enterprise participation plan or good faith effort to comply
651 with the goals of such plan; (viii) the private entity's plans to employ local contractors and
652 residents; (ix) the safety record of the private entity; (x) the ability of the facility to address the
653 needs identified in the appropriate state, regional or local transportation plan by improving
654 safety, reducing congestion, increasing capacity, ~~and/or~~ enhancing economic efficiency, or any
655 combination thereof; and (xi) other criteria that the responsible public entity deems appropriate.

656 A responsible public entity shall proceed in accordance with the guidelines adopted by it
657 pursuant to subdivision 1 unless it determines that proceeding in accordance with the guidelines
658 adopted by it pursuant to this subdivision is likely to be advantageous to the responsible public
659 entity and the public, based on ~~(i) (a)~~ the probable scope, complexity, or urgency of a project;
660 ~~(ii) (b)~~ risk sharing including guaranteed cost or completion guarantees, added value, or debt or
661 equity investments proposed by the private entity; or ~~(iii) (c)~~ an increase in funding, dedicated
662 revenue source or other economic benefit that would not otherwise be available. When the
663 responsible public entity determines to proceed according to the guidelines adopted by it
664 pursuant to this subdivision, it shall state the reasons for its determination in writing. If a state
665 agency is the responsible public entity, the approval of the Secretary ~~of Transportation~~ shall be
666 required as more specifically set forth in the guidelines before the comprehensive agreement is
667 signed.

668 3. Interim or comprehensive agreements for maintenance or asset management services
669 for a transportation facility that is a highway, bridge, tunnel, or overpass, and any amendment or
670 change order thereto that increases the highway lane-miles receiving services under such an
671 agreement, shall be procured in accordance with guidelines that are consistent with procurement

672 through "competitive sealed bidding" as set forth in § 2.2-4302.1 and subsection B of § 2.2-
673 4310. Furthermore, such contracts shall be of a size and scope to encourage maximum
674 competition and participation by agency prequalified contractors and otherwise qualified
675 contractors.

676 4. The provisions of subdivision 3 shall not apply to maintenance or asset management
677 services agreed to as part of the initial provisions of any interim or comprehensive agreement
678 entered into for the original construction, reconstruction, or improvement of any highway
679 pursuant to ~~Chapter 22 (§ 56-556 et seq.) of Title 56~~ this chapter and shall not apply to any
680 concession that, at a minimum, provides for (i) the construction, reconstruction, or improvement
681 of any transportation facility or (ii) the operation and maintenance of any transportation facility
682 with existing toll facilities.

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

686 **Drafting note: Technical changes.**

687 § 56-573.1:1. Posting of conceptual proposals; public comment; public access to
688 procurement records.

689 A. Conceptual proposals submitted in accordance with subsection A or B of § ~~56-560~~
690 33.2-xxx to a responsible public entity shall be posted by the responsible public entity within 10
691 working days after acceptance of such proposals as follows:

692 1. For responsible public entities that are state agencies, authorities, departments,
693 institutions, and other units of state government, posting shall be on the Department of General
694 Services' central electronic procurement website. For proposals submitted pursuant to subsection
695 A of § 56-560, the notice posted shall (i) provide for a period of 120 days for the submission of
696 competing proposals; (ii) include specific information regarding the proposed nature, timing,
697 and scope of the qualifying transportation facility; and (iii) outline the opportunities that will be
698 provided for public comment during the review process; and

699 2. For responsible public entities that are local public bodies, posting shall be on the
700 responsible public entity's website or on the Department of General Services' central electronic
701 procurement website. In addition, such public bodies may publish in a newspaper of general
702 circulation in the area in which the contract is to be performed a summary of the proposals and
703 the location where copies of the proposals are available for public inspection. Such local public
704 bodies are encouraged to utilize the Department of General Services' central electronic
705 procurement website to provide the public with centralized visibility and access to the
706 Commonwealth's procurement opportunities.

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

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

719 C. Once the negotiation phase for the development of an interim or a comprehensive
720 agreement is complete and a decision to award has been made by a responsible public entity, the
721 responsible public entity shall (i) post the major business points of the interim or comprehensive
722 agreement, including the projected use of any public funds, on the Department of General
723 Services' central electronic procurement website; (ii) outline how the public can submit
724 comments on those major business points; and (iii) present the major business points of the

725 interim or comprehensive agreement, including the use of any public funds, to its oversight
726 board at a regularly scheduled meeting of the board that is open to the public.

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

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

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

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

740 **Drafting note: Technical changes.**

741 | § ~~56-573.2~~ 33.2-xxx. Jurisdiction.

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

744 **Drafting note: No change.**

745 | § ~~56-573.3~~ 33.2-xxx. Contributions and gifts; prohibition during approval process.

746 A. No private entity that has submitted a bid or proposal to a public entity that is an
747 executive branch agency directly responsible to the Governor and is seeking to develop or
748 operate a transportation facility pursuant to this chapter, and no individual who is an officer or
749 director of such private entity, shall knowingly provide a contribution, gift, or other item with a
750 value greater than \$50 or make an express or implied promise to make such a contribution or
751 gift to the Governor, his political action committee, or the Governor's Secretaries, if the

752 Secretary is responsible to the Governor for an executive branch agency with jurisdiction over
753 the matters at issue, following the submission of a proposal under this chapter until the
754 execution of a comprehensive agreement thereunder. The provisions of this section shall apply
755 only for any proposal or an interim or comprehensive agreement where the stated or expected
756 value of the contract is \$5 million or more.

757 B. Any person who knowingly violates this section shall be subject to a civil penalty of
758 \$500 or up to two times the amount of the contribution or gift, whichever is greater. The
759 attorney for the Commonwealth shall initiate civil proceedings to enforce the civil penalties.
760 Any civil penalties collected shall be payable to the State Treasurer for deposit to the general
761 fund.

762 **Drafting note: No change.**

763 § ~~56-574~~ 33.2-xxx. Preservation of the Virginia Highway Corporation Act of 1988.

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

768 **Drafting note: Technical changes.**

769 § ~~56-575~~ 33.2-xxx. Severability.

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

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

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

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