

Senate Bill No. 652

(By Senators Plymale, Browning, Jenkins and Stollings)

[Introduced February 20, 2012; referred to the Committee on
Transportation and Infrastructure; and then to the Committee on
Finance.]

A BILL to amend and reenact §17-27-9 of the Code of West Virginia, 1931, as amended, relating to comprehensive agreements for public-private transportation facilities; changing final date that division may enter into comprehensive agreements; and substituting the Secretary of the Department of Transportation for the Legislature as the party authorized to approve comprehensive agreements.

Be it enacted by the Legislature of West Virginia:

That §17-27-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 27. PUBLIC-PRIVATE TRANSPORTATION FACILITIES ACT.

§17-27-9. Comprehensive agreement.

(a) Prior to acquiring, constructing or improving the

1 qualifying transportation facility, the developer shall enter into
2 a comprehensive agreement with the division. The comprehensive
3 agreement shall provide for:

4 (1) Delivery of performance or payment bonds in connection
5 with the construction of or improvements to the qualifying
6 transportation facility in the forms and amounts satisfactory to
7 the division;

8 (2) Review and approval of the final plans and specifications
9 for the qualifying transportation facility by the division;

10 (3) Inspection of the construction of or improvements to the
11 qualifying transportation facility to ensure that they conform to
12 the engineering standards acceptable to the division;

13 (4) Maintenance of a policy or policies of public liability
14 insurance or self-insurance in a form and amount satisfactory to
15 the division and reasonably sufficient to insure coverage of tort
16 liability to the public and employees and to enable the continued
17 operation of the qualifying transportation facility. ~~Provided,~~
18 ~~That~~ In no event may the insurance impose any pecuniary liability
19 on the state, its agencies or any political subdivision of the
20 state. Copies of the policies shall be filed with the division
21 accompanied by proofs of coverage;

22 (5) Monitoring of the maintenance and operating practices of
23 the developer by the division and the taking of any actions the
24 division finds appropriate to ensure that the qualifying

1 transportation facility is properly maintained and operated;

2 (6) Itemization and reimbursement to be paid to the division
3 for the review and ~~any~~ services provided by the division;

4 (7) Filing of appropriate financial statements on a periodic
5 basis;

6 (8) A reasonable maximum rate of return on investment for the
7 developer;

8 (9) The date of termination of the developer's duties under
9 this article and dedication to the division; and

10 (10) That a transportation facility shall accommodate all
11 public utilities on a reasonable, nondiscriminatory and completely
12 neutral basis and in compliance with the provisions of section
13 seventeen-b, article four, chapter seventeen of this code.

14 (b) The comprehensive agreement may require user fees
15 established by agreement of the parties. Any user fees shall be
16 set at a level that, taking into account any service payments,
17 allows the developer the rate of return on its investment specified
18 in the comprehensive agreement. ~~Provided, That~~ The schedule and
19 amount of the initial user fees to be imposed and any increase of
20 the user fees must be approved by the Commissioner of the Division
21 of Highways. A copy of any service contract shall be filed with
22 the division. A schedule of the current user fees shall be made
23 available by the developer to any member of the public on request.
24 In negotiating user fees under this section, the parties shall

1 establish fees that are the same for persons using the facility
2 under like conditions and that will not unreasonably discourage use
3 of the qualifying transportation facility. The execution of the
4 comprehensive agreement or any amendment to the comprehensive
5 agreement constitutes conclusive evidence that the user fees
6 provided in the comprehensive agreement comply with this article.
7 User fees established in the comprehensive agreement as a source of
8 revenues may be in addition to, or in lieu of, service payments.

9 (c) In the comprehensive agreement, the division may agree to
10 accept grants or loans from the developer, from time to time, from
11 amounts received from the state or federal government or any agency
12 or instrumentality of the state or federal government.

13 (d) The comprehensive agreement shall incorporate the duties
14 of the developer under this article and may contain any other terms
15 and conditions that the division determines serve the public
16 purpose of this chapter. Without limitation, the comprehensive
17 agreement may contain provisions under which the division agrees to
18 provide notice of default and cure rights for the benefit of the
19 developer and the persons specified in the comprehensive agreement
20 as providing financing for the qualifying transportation facility.
21 The comprehensive agreement may contain any other lawful terms and
22 conditions to which the developer and the division mutually agree,
23 including, without limitation, provisions regarding unavoidable
24 delays or provisions providing for a loan of public funds to the

1 developer to acquire, construct or improve one or more qualifying
2 transportation facilities.

3 (e) The comprehensive agreement shall require the deposit of
4 any earnings in excess of the maximum rate of return as negotiated
5 in the comprehensive agreement in the Economic Development Project
6 Bridge Loan Fund established pursuant to section eighteen-a,
7 article twenty-two, chapter twenty-nine of this code.

8 (f) Any changes in the terms of the comprehensive agreement,
9 agreed upon by the parties and subject to the requirements of
10 subsection (h) of this section, shall be added to the comprehensive
11 agreement by written amendment.

12 (g) Notwithstanding any provision of this article to the
13 contrary, the division may not enter into any comprehensive
14 agreements with a developer after June 30, ~~2013~~ 2016.

15 ~~(h) Notwithstanding any provision of this article to the~~
16 ~~contrary, the division may not enter into any comprehensive~~
17 ~~agreements with a developer after June 30, 2013.~~

18 ~~(i)~~ (h) Notwithstanding any provision of this article to the
19 contrary, the division may not enter into a comprehensive agreement
20 until the comprehensive agreement has been approved by the
21 ~~Legislature by the adoption of a concurrent resolution: Provided,~~
22 ~~That all voting on the floor of both houses on the question of the~~
23 ~~adoption of any concurrent resolution approving a comprehensive~~
24 ~~agreement shall be by yeas and nays to be entered on the Journals.~~

1 ~~If the Legislature approves the comprehensive agreement, the~~
2 ~~division shall submit the comprehensive agreement to the Governor~~
3 ~~for his or her approval or disapproval~~ Secretary of the Department
4 of Transportation.

NOTE: The purpose of this bill is to change the final date that division may enter into comprehensive agreements for public-private transportation facilities and to substitute the Secretary of the Department of Transportation for the Legislature as the party authorized to approve comprehensive agreements.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.