

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 15

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[Originating in the Committee on Transportation and
Infrastructure; reported on March 15, 2017]

1 A BILL to amend and reenact §17-27-9 of the Code of West Virginia, 1931, as amended, relating
2 to extending sunset on Division of Highways public-private partnership agreements;
3 placing a limit on comprehensive agreements; and requiring annual reporting.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 27. PUBLIC-PRIVATE TRANSPORTATION FACILITIES ACT.

§17-27-9. Comprehensive agreement.

1 (a) Prior to acquiring, constructing or improving the qualifying transportation facility, the
2 developer shall enter into a comprehensive agreement with the division. The comprehensive
3 agreement shall provide for:

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

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

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

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

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

19 transportation facility is properly maintained and operated;

20 (6) Itemization and reimbursement to be paid to the division for the review and any
21 services provided by the division;

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

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

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

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

29 (b) The comprehensive agreement may require user fees established by agreement of the
30 parties. Any user fees shall be set at a level that, taking into account any service payments, allows
31 the developer the rate of return on its investment specified in the comprehensive agreement:
32 *Provided*, That the schedule and amount of the initial user fees to be imposed and any increase
33 of the user fees must be approved by the Commissioner of the Division of Highways. A copy of
34 any service contract shall be filed with the division. A schedule of the current user fees shall be
35 made available by the developer to any member of the public upon request. In negotiating user
36 fees under this section, the parties shall establish fees that are the same for persons using the
37 facility under like conditions and that will not unreasonably discourage use of the qualifying
38 transportation facility. The execution of the comprehensive agreement or any amendment to the
39 comprehensive agreement constitutes conclusive evidence that the user fees provided in the
40 comprehensive agreement comply with this article. User fees established in the comprehensive
41 agreement as a source of revenues may be in addition to, or in lieu of, service payments.

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

45 (d) The comprehensive agreement shall incorporate the duties of the developer under this
46 article and may contain any other terms and conditions that the division determines serve the
47 public purpose of this chapter. Without limitation, the comprehensive agreement may contain
48 provisions under which the division agrees to provide notice of default and cure rights for the
49 benefit of the developer and the persons specified in the comprehensive agreement as providing
50 financing for the qualifying transportation facility. The comprehensive agreement may contain any
51 other lawful terms and conditions to which the developer and the division mutually agree,
52 including, without limitation, provisions regarding unavoidable delays or provisions providing for
53 a loan of public funds to the developer to acquire, construct or improve one or more qualifying
54 transportation facilities.

55 (e) The comprehensive agreement shall require the deposit of any earnings in excess of
56 the maximum rate of return as negotiated in the comprehensive agreement in the State Road
57 Fund established pursuant to section one, article three, chapter seventeen of this code.

58 (f) Any changes in the terms of the comprehensive agreement, agreed upon by the parties,
59 shall be added to the comprehensive agreement by written amendment.

60 (g) Notwithstanding any provision of this article to the contrary, the division may not enter
61 into any comprehensive agreements with a developer after ~~June 30, 2017~~ June 30, 2020;
62 Provided, That not more than thirty-five percent of federal aid shall be allocated to comprehensive
63 agreements for the construction of new transportation facilities.

64 (h) Notwithstanding any provision of this article to the contrary, at least thirty days prior to
65 execution, the commissioner shall provide a copy of a comprehensive agreement to the Joint
66 Committee on Government and Finance.

67 (i) On or before January 15, 2018, and annually thereafter, the Commissioner of Highways
68 shall prepare and submit to the Joint Committee on Government and Finance a written report
69 evaluating the experience of the Division of Highways with each project subject to this article that
70 is being planned, in progress or completed, including the following information as to each project:

- 71 (1) Description and location of the project;
72 (2) The status of the project, including the timeline from planning to completion;
73 (3) Scope of work;
74 (4) Classification of the project as a preservation project, modernization project or
75 expansion project;
76 (5) Method of financing the project;
77 (6) Estimated and final cost of the project;
78 (7) Financial information, including whether the division realized any cost or time savings,
79 the number and cost of change orders and the number of bids received;
80 (8) The quality of work performed; and
81 (9) Any other issues the commissioner considers appropriate.

NOTE: The purpose of this bill is to extend the sunset on Division of Highways public-private partnership agreements.

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