

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **Senate Bill 416**

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Introduced February 23, 2017; Referred  
to the Committee on Transportation and  
Infrastructure; and then to the Committee on Finance]



1 A BILL to amend and reenact §17-27-5 and §17-27-9 of the Code of West Virginia, 1931, as  
2 amended, all relating to the Public-Private Transportation Facilities Act; removing the cost  
3 limitation on projects completed by the Division of Highways; and eliminating the sunset  
4 provision.

*Be it enacted by the Legislature of West Virginia:*

1 That §17-27-5 and §17-27-9 of the Code of West Virginia, 1931, as amended, be amended  
2 and reenacted, all to read as follows:

**ARTICLE 27. PUBLIC-PRIVATE TRANSPORTATION FACILITIES ACT.**

**§17-27-5. Submission and review of conceptual proposals; approval by the Commissioner  
of Highways.**

1 (a) A private entity may submit in writing a solicited conceptual proposal for a  
2 transportation facility to the division for consideration. The conceptual proposal shall include the  
3 following:

4 (1) A statement of the private entity's qualifications and experience;

5 (2) A description of the proposed transportation facility;

6 (3) A description of the financing for the transportation facility; and

7 (4) A statement setting forth the degree of public support for the proposed transportation  
8 facility, including a statement of the benefits of the proposed transportation facility to the public  
9 and its compatibility with existing transportation facilities.

10 (b) Following review by the division, the division shall submit to the Commissioner of  
11 Highways the conceptual proposals and priority ranking for review for final selection.

12 (c) The conceptual proposal shall be accompanied by the following material and  
13 information unless waived by the division with respect to the transportation facility or facilities that  
14 the private entity proposes to develop as a qualifying transportation facility:

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

17 (2) A description of the transportation facility or facilities, including the conceptual design  
18 of the facility or facilities and all proposed interconnections with other transportation facilities;

19 (3) The projected total life-cycle cost of the transportation facility or facilities and the  
20 proposed date for acquisition of or the beginning of construction of, or improvements to, the  
21 transportation facility or facilities;

22 (4) A statement setting forth the method by which the developer proposes to secure all  
23 property interests required for the transportation facility or facilities: *Provided*, That with the  
24 approval of the division, the private entity may request that the comprehensive agreement assign  
25 the division with responsibility for securing all property interests, including public utility facilities,  
26 with all costs, including costs of acquiring the property, to be reimbursed to the division by the  
27 private entity. The statement shall include the following information regarding the property  
28 interests or rights, including, but not limited to, rights to extract mineable minerals:

29 (A) The names and addresses, if known, of the current owners of the property needed for  
30 the transportation facility or facilities;

31 (B) The nature of the property interests to be acquired;

32 (C) Any property that the division may expect to condemn; and

33 (D) The extent to which the property has been or will be subjected to the extraction of  
34 mineable minerals.

35 (5) Information relating to the current transportation plans, if any, of each affected local  
36 jurisdiction;

37 (6) A list of all permits and approvals required for acquisition or construction of or  
38 improvements to the transportation facility or facilities from local, state or federal agencies and a  
39 projected schedule for obtaining the permits and approvals: *Provided*, That the acquisition,  
40 construction, improvement or operation of a qualifying transportation facility that includes the  
41 extraction of mineable minerals is required to obtain all necessary permits or approvals from all

42 applicable authorities in the same manner as if it were not a qualifying transportation facility under  
43 this article;

44 (7) A list of public utility facilities, if any, that will be crossed or affected by or as the result  
45 of the construction or improvement of the public port transportation facility or facilities and a  
46 statement of the plans of the developer to accommodate the crossings or relocations;

47 (8) A statement setting forth the developer's general plans for financing and operating the  
48 transportation facility or facilities;

49 (9) The names and addresses of the persons who may be contacted for further information  
50 concerning the request;

51 (10) Information about the developer, including, but not limited to, an organizational chart  
52 of the developer, capitalization of the developer, experience in the operation of transportation  
53 facilities and references and certificates of good standing from the Tax Commissioner, Insurance  
54 Commissioner and the Division of Unemployment Compensation evidencing that the developer  
55 is in good standing with state tax, workers' compensation and unemployment compensation laws,  
56 respectively; and

57 (11) Any additional material and information requested by the Commissioner of Highways.

58 (d) The division, with approval of the Commissioner of Highways, may solicit proposals  
59 from private entities for the acquisition, construction or improvement of transportation facilities in  
60 a form and with the content determined by the division.

61 (e) The division may solicit any proposal for the acquisition, construction or improvement  
62 of the transportation facility or facilities as a qualifying transportation facility if it is determined that  
63 it serves the public purpose of this article. The division may determine that the acquisition,  
64 construction or improvement of the transportation facility or facilities as a qualifying transportation  
65 facility serves a public purpose if:

66 (1) There is a public need for the transportation facility of the type the private entity  
67 proposes to operate as a qualifying transportation facility;

68 (2) The transportation facility and the proposed interconnections with existing  
69 transportation facilities and the developer's plans for development of the qualifying transportation  
70 facility are reasonable and compatible with the state transportation plan and with the local  
71 comprehensive plan or plans;

72 (3) The estimated cost of the transportation facility or facilities is reasonable in relation to  
73 similar facilities;

74 (4) The acquisition, construction, improvement or the financing of the transportation facility  
75 or facilities does not involve any moneys from the State Road Fund: *Provided*, That moneys from  
76 the State Road Fund may be used if the project is constructed by the division: ~~is in excess of~~  
77 ~~\$20 million and is contained in the division's six year plan~~ *Provided, however*, That the moneys  
78 from the General Revenue Fund may also be used if so designated and approved by the  
79 Legislature;

80 (5) The use of federal funds in connection with the financing of a qualifying transportation  
81 facility has been determined by the division to be compatible with the state transportation plan  
82 and with the local comprehensive plan or plans; and

83 (6) The private entity's plans will result in the timely acquisition or construction of or  
84 improvements to the transportation facility for their more efficient operation and that the private  
85 entity's plans will result in a more timely and economical delivery of the transportation facility than  
86 otherwise available under existing delivery systems.

87 (f) Notwithstanding any provision of this article to the contrary, the recommendation of the  
88 division to the Commissioner of Highways is subject to:

89 (1) The private entity's entering into a comprehensive agreement with the division; and

90 (2) With respect to transportation facilities, the requirement that public information  
91 dissemination with regard to any proposal under consideration comply with the division's policy  
92 on the public involvement process, as revised.

93 (g) In connection with its approval of the development of the transportation facility as a  
94 qualifying transportation facility, the division shall establish a date for the acquisition of or the  
95 beginning of construction of or improvements to the qualifying transportation facility. The division  
96 may extend that date.

97 (h) Selection by the Commissioner of Highways:

98 (1) Upon presentations of proposals received by the division, the commissioner shall make  
99 his or her decision for the project.

100 (2) The commissioner shall notify the division and the public of the final selection for the  
101 project.

**§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.~~

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

## Introduced SB 416

NOTE: The purpose of this bill is to eliminate the cap on the size of projects constructed by the Division of Highways and to remove the sunset date.

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