

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 530

BY SENATORS BLAIR (MR. PRESIDENT) AND BALDWIN

(BY REQUEST OF THE EXECUTIVE)

[Originating in the Committee on Government

Organization; reported on February 16, 2022]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §11-13A-6b; and to amend and reenact §17-27-3, §17-27-4, §17-27-5, §17-
3 27-7, §17-27-8, §17-27-9, §17-27-11, §17-27-13, §17-27-14, §17-27-15, and §17-27-16
4 of said code, all relating to encouraging public-private partnerships related to
5 transportation facilities; providing coal severance tax escrow fund for the state portion of
6 coal severance taxes paid on a public-private transportation facility; authorizing the
7 Division of Highways to repay collected tax in escrow to private entities; cleaning up
8 antiquated language; clarifying the roles of the division, public entities, and developers;
9 simplifying the public-private partnership review process; clarifying that Commissioner of
10 the Division of Highways may approve or modify the division's rankings, authorize
11 negotiations and entry into comprehensive agreement with the highest-ranked developer,
12 or reject all proposals; providing that division is not obligated to accept, consider, or review
13 unsolicited conceptual proposals, but may choose to do so; providing that no obligation
14 or liability attaches to either party if they are unable to reach an agreement; providing that
15 the division may negotiate a comprehensive agreement with the next highest-ranked
16 developer if agreement cannot be reached with highest-ranked developer; clarifying the
17 extent to which the division may utilize condemnation if it is found the project serves a
18 public purpose or the developer is in material default; and exempting public-private
19 partnership agreements from statutory government construction contract requirements.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT

§11-13A-6b. Severance tax on coal extracted incident to highway construction performed under §17-27-1 et seq. of this code.

1 (a) Notwithstanding any other provision of this code, severance tax paid on coal extracted

2 incident to the construction of any highway financed, in whole or in part, by this state or any
3 agency of the government of the United States, and subject to the provisions of 30 CFR §912.707
4 or §22-3-26 of this code shall be deposited on a quarterly basis by the Tax Commissioner in a
5 special fund in the State Treasury to be managed by the Commissioner of the Division of
6 Highways and held in escrow until such time as the conditions specified in this section are
7 complied with.

8 (b) Coal severance tax subject to escrow.

9 (1) The severance tax subject to escrow under this section includes:

10 (A) The 4.65 percent state portion of severance tax on coal imposed under §11-13A-3 of
11 this code; and

12 (B) The 1.65 percent state portion of the coal severance tax on coal extracted from seams
13 having a thickness of 37 to 45 inches; and

14 (C) The 0.65 percent state portion of the coal severance tax on coal extracted from seams
15 having a thickness of less than 37 inches; and

16 (D) The 2.65 percent state portion of the coal severance tax on thermal coal imposed
17 under §11-13A-3(b) of this code; and

18 (E) If the minimum severance tax set forth in §11-12B-1 et seq. of this code is paid or due
19 owing and payable, the minimum severance tax.

20 (c) Coal severance tax not subject to escrow. The severance tax on coal imposed under
21 §11-13A-3 and §11-13A-6 of this code for the benefit of counties and municipalities may not be
22 subject to escrow under this section, but shall be distributed for the benefit of counties and
23 municipalities as mandated by law.

24 (d) The moneys accumulated in escrow pursuant to the provisions of this section shall be
25 paid to each participant in a public-private partnership related to transportation facilities under
26 §17-27-1 et seq. of this code.

27 (e) The amount paid to each such private entity shall be equal to the severance tax paid

28 by each entity that was deposited into the escrow fund, with interest at the statutory rate of interest
29 on tax overpayments established under the West Virginia Tax Procedure and Administration Act,
30 §11-10-1 et seq. of this code.

31 (f) Moneys to be paid out of the escrow fund to each such private entity shall only be paid
32 when the Commissioner of the Division of Highways has certified that:

33 (1) All contracted work of the private entity for construction of the highway that yielded
34 the coal extracted incident to the construction has been satisfactorily completed, and that the work
35 meets all applicable highway construction standards;

36 (2) All Taxes due and owing to this state by the private entity have been paid;

37 (3) All rights of way relating to the highway have been satisfactorily settled;

38 (4) All subcontractors, laborers, and obligees of the private entity have been properly paid;

39 (5) All legal and contractual obligations undertaken by the private entity under §17-27-1 et
40 seq. of this code have been satisfactorily fulfilled; and

41 (6) The private entity is in compliance with all state and federal laws applicable to the
42 construction project.

43 (g) Upon a determination by the Commissioner of the Division of Highways that moneys
44 in the escrow fund may not be paid, or that the moneys have remained unpaid for a period of not
45 less than one year, the moneys shall be removed from the escrow fund and paid into the General
46 Fund.

CHAPTER 17. ROADS AND HIGHWAYS

ARTICLE 27. PUBLIC-PRIVATE TRANSPORTATION FACILITIES ACT.

§17-27-3. Prerequisites for development.

1 Any private entity seeking authorization under this article to acquire, construct, or improve
2 a transportation facility shall first submit a conceptual proposal as set forth in §17-27-5 of this
3 code. ~~Provided, That notwithstanding any provision of this code to the contrary, the division has~~

4 ~~no duty to accept, consider or review a conceptual proposal that is not solicited by the division.~~
5 ~~The private entity may initiate the approval process pursuant to subsections (a) and (b) of said~~
6 ~~section or the division may alternatively request proposals pursuant to subsection (c) of said~~
7 ~~section~~

§17-27-4. Powers and duties of the division and other agencies that are part of the department.

1 In addition to the powers and duties set forth elsewhere in this code, the division and any
2 other agency that is part of the department may:

3 (1) ~~Undertake one level of review for each proposal~~ Review proposals submitted by a
4 private entity entities in accordance with this article. ~~The review shall consist of the review by the~~
5 ~~division of the conceptual proposal: *Provided*, That expenses of the division incurred for review~~
6 ~~of proposal shall be paid by the private entity submitting the proposal~~ The division shall take into
7 account at all times the needs and funding capabilities of the state as a whole in terms of
8 transportation;

9 (2) Enter into agreements, contracts, or other transactions with any agency that is part of
10 the department, as well as any federal, state, county, municipal agency, or private entity;

11 (3) Act on behalf of the state and represent the state in the planning, financing,
12 development, and construction of any transportation facility for which ~~solicited~~ proposals have
13 been received in accordance with the provisions of this article, ~~with the concurrence of the affected~~
14 ~~public entity~~. Other public entities in this state shall cooperate to the fullest extent with what the
15 division considers appropriate to effectuate the duties of the division;

16 (4) Exempt from disclosure any sensitive business, commercial, or financial information
17 that is not customarily provided to business competitors that is submitted to the division for final
18 review and approval;

19 (5) Exempt from disclosure any documents, communications, or information described in
20 this section including, but not limited to, the project's design, management, financing, and other

21 details in accordance with ~~the provisions of~~ §29B-1-1 *et seq.* of this code; and

22 (6) Do any and all things necessary to carry out and accomplish the purposes of this
23 article.

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

1 (a) The division may solicit, or A a private entity may submit in writing, a ~~solicited~~
2 conceptual proposal for a transportation facility to the division for consideration. The conceptual
3 proposal shall include the 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)~~ (b) 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~~ private entity proposes to
23 secure all property interests required for the transportation facility or facilities: *Provided*, That with
24 the approval of the division, the private entity may request that the comprehensive agreement
25 assign the division with responsibility for securing all property interests, including public utility
26 facilities, with all costs, including costs of acquiring the property, to be reimbursed to the division
27 by the 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~~ private entity's general plans for financing
48 and operating the 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 private entity and, to the extent they differ, any developer,
52 including, but not limited to, an organizational chart, ~~of the developer~~ capitalization, ~~of the~~
53 ~~developer~~ experience in the operation of transportation facilities, and references and certificates
54 of good standing from the Tax Commissioner, Insurance Commissioner, and the Division of
55 Unemployment Compensation evidencing ~~that the developer is in~~ good standing with state tax,
56 workers' compensation and unemployment compensation laws, 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)~~ (c) The division may solicit ~~any proposal~~ proposals for the acquisition, construction, or
62 improvement of the any transportation facility or facilities ~~as a qualifying transportation facility~~ if it
63 is determined that it serves the public purpose of this article. The division may determine that the
64 acquisition, construction, or improvement of the transportation facility or facilities as a qualifying
65 transportation 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~~ any
71 applicable local ~~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 \$10~~
77 ~~million and is contained in the division's six-year plan: *Provided, however*, That the moneys from~~
78 ~~the General Revenue Fund may also be used if so designated and approved by the Legislature~~

79 ~~(5)~~(4) The use of federal funds in connection with the financing of a qualifying
80 transportation facility has been determined by the division to be compatible with the state
81 transportation plan and with the any applicable local comprehensive plan or plans; and

82 ~~(6)~~(5) The private entity's plans solicitation will result in the timely acquisition, or
83 construction, of or improvements to the of transportation facility for their facilities, or the more
84 efficient operation thereof, and that the private entity's plans will result in a more timely and
85 economical delivery of the transportation facility facilities than otherwise available under existing
86 delivery systems.

87 (f) (d) Notwithstanding any provision of this article to the contrary, the recommendation of
88 the 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 If proposals for a transportation facility are solicited by the division, the division shall review~~
102 ~~all solicited conceptual proposals, assign them a priority ranking, and present them with the~~
103 ~~priority ranking to the Commissioner of the Division of Highways for review. Upon presentation of~~
104 ~~the priority-ranked proposals, the commissioner shall approve or modify the division's rankings,~~
105 ~~and may authorize the division to negotiate and enter into a comprehensive agreement with the~~
106 ~~highest-ranked developer or reject all proposals. The division has no duty to accept, consider, or~~
107 ~~review a conceptual proposal that was not solicited by the division, but may do so in its sole~~
108 ~~discretion.~~

§17-27-7. Dedication of public property.

1 Any public entity may dedicate any property interest that it has for public use as a qualified
2 transportation facility if it finds it will serve the public purpose of this article. In connection with the
3 dedication, a public entity may convey any property interest that it has to ~~the~~ a developer or the
4 division, by contract for any consideration determined by the public entity. This consideration may
5 include, without limitation, the agreement of the developer to develop the qualifying transportation
6 facility. No real property may be dedicated by a public entity pursuant to this article unless all
7 other public notice and comment requirements are met.

§17-27-8. Powers and duties of the developer.

1 (a) The developer has all power allowed by law generally to a private entity having the
2 same form of organization as the developer and may acquire, construct or improve ~~the~~ a qualifying
3 transportation facility and impose user fees in connection with the use of the facility.

4 (b) The developer may own, lease or acquire any other right to facilitate the development
5 of ~~the~~ a qualifying transportation facility.

6 (c) Any financing of ~~the~~ a qualifying transportation facility may be in the amounts and upon

7 terms and conditions ~~determined~~ negotiated by the developer. The developer may issue debt,
8 equity or other securities or obligations, enter into sale and leaseback transactions and secure
9 any financing with a pledge of, security interest in, or lien on, any or all of its property, including
10 all of its property interests in the qualifying transportation facility.

11 ~~(d) Subject to applicable permit requirements, the developer may cross any canal or~~
12 ~~navigable watercourse as long as the crossing does not unreasonably interfere with the current~~
13 ~~navigation and use of the waterway~~

14 ~~(e)~~ (d) In developing the qualifying transportation facility, the developer may:

15 (1) Make classifications according to reasonable categories for assessment of user fees;
16 and

17 (2) With the consent of the division, make and enforce reasonable rules to the same extent
18 that the division may make and enforce rules with respect to a similar transportation facility. The
19 developer may, by agreement with appropriate law-enforcement agencies, arrange for video
20 enforcement in connection with its toll collection activities.

21 ~~(f)~~ (e) The developer shall:

22 (1) Acquire, construct, or improve the qualifying transportation facility in a manner that
23 meets the engineering standards of:

24 (A) The authority for facilities operated and maintained by the division, in accordance with
25 the provisions of the comprehensive agreement; and

26 (B) The division, in accordance with the provisions of the comprehensive agreement;

27 (2) Keep the qualifying transportation facility open for use by the members of the public at
28 all times after its initial opening upon payment of the applicable user fees or service payments:

29 *Provided*, That the qualifying transportation facility may be temporarily closed because of
30 emergencies or, with the consent of the division, to protect the safety of the public or for
31 reasonable construction or maintenance procedures;

32 (3) Contract for the performance of all maintenance and operation of the transportation

33 facility through the division, using its maintenance and operations practices, until the date of
34 termination of the developer's duties as defined in the comprehensive agreement;

35 (4) Cooperate with the division in establishing any interconnection with the qualifying
36 transportation facility requested by the division;

37 (5) Remain in compliance with state tax, workers' compensation, and unemployment
38 compensation laws; and

39 (6) Comply with the provisions of the comprehensive agreement and any service contract.

§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 §17-4-~~
28 17b 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~~ shall be approved by the Commissioner of the Division of Highways. A copy
34 of 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 §17-3-1 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 ~~any comprehensive agreements with a developer after June 30, 2023~~

62 ~~(h)~~ (g) Notwithstanding any provision of this article to the contrary, at least ~~thirty~~ 60 days
63 prior to execution, the commissioner shall provide a copy of a comprehensive agreement to the
64 Joint Committee on Government and Finance and the Joint Legislative Oversight Commission on
65 Department of Transportation Accountability.

66 (h) If a developer and the division cannot agree to the terms of a comprehensive
67 agreement, neither party shall have any further obligation or liability to the other. In the event a

68 developer and the division fail to enter into a comprehensive agreement, the commissioner may
69 authorize the division to negotiate and enter into a comprehensive agreement with any next-
70 highest-ranked developer identified pursuant to §17-27-5 of this code.

71 (i) Before entering into any comprehensive agreement related to or resulting from an
72 unsolicited proposal, the commissioner shall make a written finding that entry into the
73 comprehensive agreement serves the public purpose of this article and is in the best interest of
74 the state.

§17-27-11. Material default; remedies.

1 (a) Except upon written agreement of the developer and any other parties identified in the
2 comprehensive agreement, the division may exercise, ~~at its discretion,~~ any or all of the following
3 remedies provided in this section or elsewhere in this article to remedy any material default that
4 has occurred or may continue to occur.

5 (1) To elect to take over the transportation facility or facilities and in that case, it shall
6 succeed to all of the rights, title and interest in the transportation facility or facilities, subject to any
7 liens on revenues previously granted by the developer to any person providing financing for the
8 facility or facilities and the provisions of subsection (c) of this section;

9 (2) To exercise the power of condemnation to acquire the qualifying transportation facility
10 or facilities ; ~~Any person who has provided financing for the qualifying transportation facility and~~
11 ~~the developer, to the extent of its capital investment, may participate in the condemnation~~
12 ~~proceedings with the standing of a property owner~~

13 (3) To terminate the comprehensive agreement and exercise any other rights and
14 remedies that may be available to it at law or in equity, subject only to the express limitations of
15 the terms of the comprehensive agreement; and

16 (4) To make or cause to be made any appropriate claims under the performance or
17 payment bonds required by this article.

18 (b) ~~In the event the~~ If division elects to take over a qualifying transportation facility pursuant

19 to subdivision (1), subsection (a) of this section, the division may acquire, construct, or improve
20 the transportation facility, impose user fees for the use of the transportation facility and comply
21 with any service contracts as if it were the developer. Any revenues that are subject to a lien shall
22 be collected for the benefit of, and paid to, secured parties, as their interests may appear, to the
23 extent necessary to satisfy the developer's obligations to secured parties, including the
24 maintenance of reserves and the liens shall be correspondingly reduced and, when paid off,
25 released. ~~Remaining revenues, if any, after all payments to, or for the benefit of, secured parties~~
26 ~~shall be paid to the developer, subject to the negotiated maximum rate of return. The right to~~
27 ~~receive the payment, if any, shall be considered just compensation for the transportation facility~~
28 ~~or facilities.~~ The full faith and credit of the division may not be pledged to secure any financing of
29 the developer by the election to take over the qualifying transportation facility. Assumption of
30 development of the qualifying transportation facility does not obligate the division to pay any
31 obligation of the developer from sources other than revenues.

§17-27-13. Condemnation.

1 (a) At the request of the developer, the division may exercise the power of condemnation
2 that it has under law for the purpose of acquiring any lands or estates or interests in any lands or
3 estates to the extent that the division finds that the action serves the public purpose of this article.
4 ~~Provided, That the power of condemnation may not be exercised if the extraction of mineable~~
5 ~~minerals is outside the defined one thousand foot corridor of the project or work which is the~~
6 ~~subject of a solicited conceptual proposal, comprehensive agreement or service contract~~
7 ~~submitted or entered into under the provisions of this article~~ Any amounts to be paid in any
8 condemnation proceeding shall be paid by the developer.

9 (b) Until the division has provided written certification as to the existence of a material
10 default under §17-27-11(a) of this code, the power of condemnation may not be exercised against
11 a qualifying transportation facility.

§17-27-14. Utility crossings.

1 The developer and each county, municipality, public service district, ~~public~~ utility, railroad,
2 and cable television provider whose facilities are to be crossed or affected shall cooperate fully
3 with the other in planning and arranging the manner of the crossing or relocation of the facilities.
4 Any entity possessing the power of condemnation is expressly granted the powers in connection
5 with the moving or relocation of facilities to be crossed by the qualifying transportation facility or
6 that must be relocated to the extent that the moving or relocation is made necessary or desirable
7 by construction of or improvements to the qualifying transportation facility, which includes
8 construction of or improvements to temporary facilities for the purpose of providing service during
9 the period of construction or improvement. Any amount to be paid for the crossing, construction,
10 moving or relocating of facilities shall be paid by the developer.

§17-27-15. Dedication of assets.

1 The division shall terminate the developer's authority and duties under this article on the
2 date set forth in the comprehensive agreement. Upon termination, the ~~division and~~ duties of the
3 developer and division under this article cease and the qualifying transportation facility shall be
4 dedicated to the division for public use.

§17-27-16. Qualifying a transportation facility as a public improvement.

1 ~~All qualifying transportation facilities authorized under this article are public improvements~~
2 ~~and are subject to article five-a, chapter twenty-one of this code. Article twenty-two, chapter five~~
3 ~~of this code applies to all qualifying transportation facilities authorized under this article. All~~
4 ~~construction, reconstruction, repair or improvement of qualifying transportation facilities~~
5 ~~authorized under this article shall be awarded by competitive bidding. Competitive bids shall be~~
6 ~~solicited by the division for each construction contract in excess of \$25,000 in total cost.~~
7 ~~Construction costs should be of sufficient size that the performance and payment bonds are in~~
8 ~~the \$10 million to \$30 million range, where possible. Competitive bids shall be solicited by the~~
9 ~~division through publication of a Class II legal advertisement, in compliance with the provisions of~~
10 ~~article three, chapter fifty-nine of this code, and the publication area is the county or municipality~~

11 ~~in which the transportation facility is to be located. The advertisement shall also be published as~~
12 ~~a Class II advertisement in a newspaper of general circulation published in the city of Charleston.~~
13 ~~The advertisement shall solicit sealed proposals for the construction of the transportation facility,~~
14 ~~stating the time and place for the opening of bids. All bids shall be publicly opened and read aloud.~~
15 ~~Construction contracts shall be awarded to the lowest qualified responsible bidder, who shall~~
16 ~~furnish a sufficient performance or payment bond: *Provided*, That both the division and the private~~
17 ~~entity have the right to reject all bids and solicit new bids for the construction contract~~
18 Comprehensive agreements entered into pursuant to this article are exempt from the provisions
19 of §5-22-1 et seq. of this code. The provisions §21-1C-1 et seq. of this code apply to the
20 construction of all qualifying transportation facilities approved under this article.