



1 public-private partnership projects to use money from the  
2 State Road Fund when the projects are in excess of  
3 \$20 million, constructed by the Division of Highways and  
4 contained in its six-year plan; providing that any earnings in  
5 excess of maximum rate of return that is negotiated in  
6 comprehensive agreements be deposited in the State Road Fund;  
7 providing a sunset provision prohibiting comprehensive  
8 agreements for public-private partnership projects after June  
9 30, 2017; eliminating the requirement that a comprehensive  
10 agreement for public-private partnership projects be approved  
11 by concurrent resolution of the Legislature and be submitted  
12 to the Governor for his or her approval or disapproval before  
13 the Division of Highways enters into the comprehensive  
14 agreement; and mandating that the Division of Highways provide  
15 a copy of any comprehensive agreement to the Legislature's  
16 Joint Committee on Government and Finance at least thirty days  
17 prior to said agreement being executed by the Division of  
18 Highways for a public-private partnership project.

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

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

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

1 **§17-27-5. Submission and review of conceptual proposals; approval**  
2 **by the Commissioner of Highways.**

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

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

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

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

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

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

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

1 facility:

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

5 (2) A description of the transportation facility or  
6 facilities, including the conceptual design of the facility or  
7 facilities and all proposed interconnections with other  
8 transportation facilities;

9 (3) The projected total life-cycle cost of the transportation  
10 facility or facilities and the proposed date for acquisition of or  
11 the beginning of construction of, or improvements to, the  
12 transportation facility or facilities;

13 (4) A statement setting forth the method by which the  
14 developer proposes to secure all property interests required for  
15 the transportation facility or facilities: *Provided*, That with the  
16 approval of the division, the private entity may request that the  
17 comprehensive agreement assign the division with responsibility for  
18 securing all property interests, including public utility  
19 facilities, with all costs, including costs of acquiring the  
20 property, to be reimbursed to the division by the private entity.  
21 The statement shall include the following information regarding the  
22 property interests or rights, including, but not limited to, rights

1 to extract mineable minerals:

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

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

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

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

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

11 (6) A list of all permits and approvals required for  
12 acquisition or construction of or improvements to the  
13 transportation facility or facilities from local, state or federal  
14 agencies and a projected schedule for obtaining the permits and  
15 approvals: *Provided*, That the acquisition, construction,  
16 improvement or operation of a qualifying transportation facility  
17 that includes the extraction of mineable minerals is required to  
18 obtain all necessary permits or approvals from all applicable  
19 authorities in the same manner as if it were not a qualifying  
20 transportation facility under this article;

21 (7) A list of public utility facilities, if any, that will be  
22 crossed or affected by or as the result of the construction or

1 improvement of the public port transportation facility or  
2 facilities and a statement of the plans of the developer to  
3 accommodate the crossings or relocations;

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

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

9 (10) Information about the developer, including, but not  
10 limited to, an organizational chart of the developer,  
11 capitalization of the developer, experience in the operation of  
12 transportation facilities and references and certificates of good  
13 standing from the Tax Commissioner, Insurance Commissioner and the  
14 Division of Unemployment Compensation evidencing that the developer  
15 is in good standing with state tax, workers' compensation and  
16 unemployment compensation laws, respectively; and

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

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

1 division.

2 (e) The division may solicit any proposal for the acquisition,  
3 construction or improvement of the transportation facility or  
4 facilities as a qualifying transportation facility if it is  
5 determined that it serves the public purpose of this article. The  
6 division may determine that the acquisition, construction or  
7 improvement of the transportation facility or facilities as a  
8 qualifying transportation facility serves a public purpose if:

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

12 (2) The transportation facility and the proposed  
13 interconnections with existing transportation facilities and the  
14 developer's plans for development of the qualifying transportation  
15 facility are reasonable and compatible with the state  
16 transportation plan and with the local comprehensive plan or plans;

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

19 (4) The acquisition, construction, improvement or the  
20 financing of the transportation facility or facilities does not  
21 involve any moneys from the State Road Fund: ~~unless those moneys~~  
22 ~~from the State Road Fund serve as a required match for federal~~

1 ~~funds specifically earmarked in a federal authorization or~~  
2 ~~appropriation bill for a transportation facility to be acquired,~~  
3 ~~constructed or equipped pursuant to this article: *Provided, That*~~  
4 ~~the dedication of State Road Fund moneys in any fiscal year as~~  
5 ~~state required match for the federal earmark does not exceed four~~  
6 ~~percent of the immediate preceding three fiscal years' average of~~  
7 ~~division's construction contracts awarded under the competitive bid~~  
8 ~~process: *Provided, That moneys from the State Road Fund may be*~~  
9 ~~*used if the project is constructed by the division, is in excess of*~~  
10 ~~*\$20 million and is contained in the division's six-year plan:*~~  
11 ~~*Provided, however, That the moneys from the General Revenue Fund*~~  
12 ~~may also be used if so designated and approved by the Legislature.~~

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

17 (6) The private entity's plans will result in the timely  
18 acquisition or construction of or improvements to the  
19 transportation facility for their more efficient operation and that  
20 the private entity's plans will result in a more timely and  
21 economical delivery of the transportation facility than otherwise  
22 available under existing delivery systems.



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

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

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

10 (g) In connection with its approval of the development of the  
11 transportation facility as a qualifying transportation facility,  
12 the division shall establish a date for the acquisition of or the  
13 beginning of construction of or improvements to the qualifying  
14 transportation facility. The division may extend that date.

15 (h) Selection by the Commissioner of Highways:

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

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

20 **§17-27-9. Comprehensive agreement.**

21 (a) Prior to acquiring, constructing or improving the  
22 qualifying transportation facility, the developer shall enter into

1 a comprehensive agreement with the division. The comprehensive  
2 agreement shall provide for:

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

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

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

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

21 (5) Monitoring of the maintenance and operating practices of  
22 the developer by the division and the taking of any actions the

1 division finds appropriate to ensure that the qualifying  
2 transportation facility is properly maintained and operated;

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

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

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

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

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

15 (b) The comprehensive agreement may require user fees  
16 established by agreement of the parties. Any user fees shall be set  
17 at a level that, taking into account any service payments, allows  
18 the developer the rate of return on its investment specified in the  
19 comprehensive agreement: *Provided*, That the schedule and amount of  
20 the initial user fees to be imposed and any increase of the user  
21 fees must be approved by the Commissioner of the Division of  
22 Highways. A copy of any service contract shall be filed with the

1 division. A schedule of the current user fees shall be made  
2 available by the developer to any member of the public ~~on~~ upon  
3 request. In negotiating user fees under this section, the parties  
4 shall establish fees that are the same for persons using the  
5 facility under like conditions and that will not unreasonably  
6 discourage use of the qualifying transportation facility. The  
7 execution of the comprehensive agreement or any amendment to the  
8 comprehensive agreement constitutes conclusive evidence that the  
9 user fees provided in the comprehensive agreement comply with this  
10 article. User fees established in the comprehensive agreement as a  
11 source of revenues may be in addition to, or in lieu of, service  
12 payments.

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

17       (d) The comprehensive agreement shall incorporate the duties  
18 of the developer under this article and may contain any other terms  
19 and conditions that the division determines serve the public  
20 purpose of this chapter. Without limitation, the comprehensive  
21 agreement may contain provisions under which the division agrees to  
22 provide notice of default and cure rights for the benefit of the

1 developer and the persons specified in the comprehensive agreement  
2 as providing financing for the qualifying transportation facility.  
3 The comprehensive agreement may contain any other lawful terms and  
4 conditions to which the developer and the division mutually agree,  
5 including, without limitation, provisions regarding unavoidable  
6 delays or provisions providing for a loan of public funds to the  
7 developer to acquire, construct or improve one or more qualifying  
8 transportation facilities.

9 (e) The comprehensive agreement shall require the deposit of  
10 any earnings in excess of the maximum rate of return as negotiated  
11 in the comprehensive agreement in the ~~Economic Development Project~~  
12 ~~Bridge Loan Fund~~ State Road Fund established pursuant to ~~section~~  
13 ~~eighteen a, article twenty two, chapter twenty nine~~ section one,  
14 article three, chapter seventeen of this code.

15 (f) Any changes in the terms of the comprehensive agreement,  
16 agreed upon by the parties ~~and subject to the requirements of~~  
17 ~~subsection (h) of this section,~~ shall be added to the comprehensive  
18 agreement by written amendment.

19 (g) Notwithstanding any provision of this article to the  
20 contrary, the division may not enter into any comprehensive  
21 agreements with a developer after June 30, ~~two thousand thirteen~~  
22 2017.

1 (h) Notwithstanding any provision of this article to the  
2 contrary, ~~the division may not enter into any comprehensive~~  
3 ~~agreements with a developer after the thirtieth day of June, two~~  
4 ~~thousand thirteen.~~

5 (i) ~~Notwithstanding any provision of this article to the~~  
6 ~~contrary, the division may not enter into a comprehensive agreement~~  
7 ~~until the comprehensive agreement has been approved by the~~  
8 ~~Legislature by the adoption of a concurrent resolution: *Provided,*~~  
9 ~~That all voting on the floor of both houses on the question of the~~  
10 ~~adoption of any concurrent resolution approving a comprehensive~~  
11 ~~agreement shall be by yeas and nays to be entered on the Journals.~~  
12 ~~If the Legislature approves the comprehensive agreement, the~~  
13 ~~division shall submit the comprehensive agreement to the Governor~~  
14 ~~for his or her approval or disapproval at least thirty days prior~~  
15 ~~to execution, the commissioner shall provide a copy of a~~  
16 ~~comprehensive agreement to the Joint Committee on Government and~~  
17 ~~Finance.~~