

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 283

FISCAL
NOTE

BY SENATORS MAYNARD AND SMITH

[Introduced February 13, 2021; referred
to the Committee on Transportation and
Infrastructure; and then to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §17-2F-1, relating to public and private financing of road construction projects.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 2F. PUBLIC AND PRIVATE FINANCING OF ROAD CONSTRUCTION
PROJECTS.**

§17-2F-1. Public and private financing of road construction projects.

1 (a)(1) The department shall evaluate a project to determine, in the judgment of the
2 department, appropriate or desirable levels of state, local, and private participation in financing
3 such project. In making such determination, the department shall be authorized and encouraged
4 to seek the advice and input of the affected local governing authorities, applicable metropolitan
5 planning organizations, and the private financial and construction sectors.

6 (2) For projects that are funded or financed, in part or in whole, by private sources, the
7 department shall be authorized to issue a written request for proposal indicating in general terms
8 the scope of the project, the proposed financial participations in the project, and the factors that
9 will be used in evaluating the proposal and containing or incorporating by reference other
10 applicable contractual terms and conditions, including any unique capabilities or qualifications
11 that will be required of the contractor. Public notice of such request for proposal shall be made at
12 least 90 days prior to the date set for receipt of proposals by posting the legal notice on a single
13 website that shall be procured and maintained for such purposes by the Department of
14 Transportation or in substantially the same manner utilized by the department to solicit requests
15 for proposals.

16 (3) Upon receipt of a proposal or proposals responsive to the request for proposals, the
17 department shall accept written public comment, solicited in the same manner as provided for
18 notice of proposals, for a period of 30 days beginning at least 10 days after the date set for receipt
19 of proposals. In addition, the department shall hold at least one public hearing on such proposals

20 not later than the conclusion of the period for public comment.

21 (4) The department shall engage in individual discussions with two or more respondents
22 deemed fully qualified, responsible, and suitable on the basis of initial responses and with
23 emphasis on professional competence and ability to meet the level of private financial
24 participation called for by the department. Repetitive informal interviews are permissible. In the
25 event that any local governing authority has agreed to consider financial participation in the
26 project, a representative of such local governing authority, appointed by such local governing
27 authority, may participate in such discussions and interviews. At the discussion stage, the
28 department may discuss estimates of total project costs, including, but not limited to, life cycle
29 costing and nonbinding estimates of price for services. Proprietary information from competing
30 respondents may not be disclosed to the public or to competitors. At the conclusion of such
31 discussions, on the basis of evaluation factors published in the request for proposal and all
32 information developed in the selection process, the department, with the input of any participating
33 local governing authority, shall select in the order of preference, two or more respondents whose
34 qualifications and proposed services are deemed most meritorious. Negotiations shall then be
35 conducted with two or more respondents and with the participation of the designated
36 representative of any participating local governing authority. Upon approval by the department,
37 the Commissioner of the Division of Highways shall select the respondent for project
38 implementation based upon contract terms that are the most satisfactory and advantageous to
39 the state and to the department based upon a thorough assessment of value and the ability of the
40 final project's characteristics to meet state strategic goals and investment policies. Before making
41 such selection, the commissioner shall consult with any participating local governing authority or
42 authorities. Notwithstanding the foregoing, if the terms and conditions for multiple awards are
43 included in the request for proposal, the department may award contracts to more than one
44 respondent. Should the department determine in writing and in its sole discretion that only one
45 respondent is fully qualified, or that one respondent is clearly more highly qualified and suitable

46 than the others under consideration, a contract may be negotiated and awarded to that
47 respondent.

48 (5) Nothing in this section requires the department to continue negotiations or discussions
49 arising out of any request for proposal.

50 (6) The department shall propose reasonable rules in accordance with the provisions of
51 §29A-3-1 et seq. of this code to assist in its evaluation of the proposal and to implement the
52 purposes of this section. The department shall report the content of such rules to the
53 Transportation Committees of the Senate and House of Delegates and shall make quarterly
54 reports to the same chairpersons of all of its activities undertaken pursuant to the provisions of
55 this section.

56 (b) Any contracts entered into pursuant to this section may authorize funding to include
57 tolls, fares, or other user fees and tax increments for use of the project that is the subject of the
58 proposal. Such funding may be distributed by contract among the participants in the project as
59 may be provided for by contract. The department may take any action to obtain federal, state, or
60 local assistance for a qualifying project that serves the public purpose of this section and may
61 enter into any contracts required to receive such assistance. The department may determine that
62 it serves the public purpose of this section for all or any portion of the costs of a qualifying project
63 to be paid, directly or indirectly, from the proceeds of a grant or loan made by the federal, state,
64 or local government or any instrumentality thereof. The department may agree to make grants or
65 loans to the operator from time-to-time from amounts received from the federal, state, or local
66 government, or any agency or instrumentality thereof.

67 (c) The secretary is authorized to delegate such duties and responsibilities under this
68 section as he or she deems appropriate from time to time: *Provided*, That the final approval of
69 contracts provided for in this section shall be by action of the secretary.

70 (d) The power of eminent domain may not be delegated to any private entity with respect
71 to any project commenced or proposed pursuant to this section.

72 (e) Any contract for a public-private partnership shall require the private partner or each
73 of its prime contractors to provide performance and payment security. Notwithstanding any other
74 provision of law, the penal sum or amount of such security may be less than the price of the
75 contract involved, based upon the department's determination on a project-by-project basis of
76 what sum may be required to adequately protect the department, the state, and the contracting
77 and subcontracting parties.

NOTE: The purpose of this bill is to provide for the public and private financing of road construction projects.

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