

HB 4476

FILED

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OF DEPT. OF STATE  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2008

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**ENROLLED**

**House Bill No. 4476**

(By Delegates Hrutkay, Tucker, Martin,  
Swartzmiller, D. Poling, Stalnaker and Craig)

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Passed March 8, 2008

In Effect Ninety Days from Passage

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COMMITTEE SUBSTITUTE

FOR

## H. B. 4476

OFFICE OF THE CLERK  
OF THE WEST VIRGINIA  
LEGISLATURE

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(BY DELEGATES HRUTKAY, TUCKER, MARTIN,  
SWARTZMILLER, D. POLING, STALNAKER AND CRAIG)

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[Passed March 8, 2008; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17-27-1, §17-27-2, §17-27-3, §17-27-4, §17-27-5, §17-27-6, §17-27-7, §17-27-8, §17-27-9, §17-27-10, §17-27-11, §17-27-12, §17-27-13, §17-27-14, §17-27-15, §17-27-16, §17-27-17 and §17-27-18, all relating to establishment of the Public-Private Transportation Facilities Act; setting forth legislative findings and purposes; defining terms; providing prerequisites for acquiring, constructing or improving of a transportation facility; creating public-private transportation oversight within the Division of Highways; creating the powers and duties of the division and any other agencies that are part of the department; providing for the submission of proposals and approval by the division; providing for service contracts; providing for the dedication of public property; setting forth the powers and duties of a developer; requiring a comprehensive agreement; requiring that comprehensive

agreement be adopted by the Legislature by concurrent resolution; requiring yeas and nays to be entered in journal; providing for federal, state and local assistance; addressing the issues of material default and remedies; prohibiting governmental entities from pledging full faith and credit; providing for the exercise of condemnation; addressing utility crossings and relocations; addressing dedication of assets; qualifying transportation facilities as public improvements; providing for an exemption of qualifying transportation facilities from taxation; addressing liberal construction and application of article; and requiring approval of Governor.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §17-27-1, §17-27-2, §17-27-3, §17-27-4, §17-27-5, §17-27-6, §17-27-7, §17-27-8, §17-27-9, §17-27-10, §17-27-11, §17-27-12, §17-27-13, §17-27-14, §17-27-15, §17-27-16, §17-27-17 and §17-27-18, all to read as follows:

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

**§17-27-1. Legislative findings and purposes.**

1 The Legislature finds and declares:

2 (1) That there is a public need for timely acquisition or  
3 construction of and improvements to transportation facilities  
4 within the state that are compatible with state and local  
5 transportation plans;

6 (2) That public need may not be wholly satisfied by  
7 existing ways in which transportation facilities are acquired,  
8 constructed or improved;

9 (3) That authorizing private entities to acquire, construct  
10 or improve one or more transportation facilities may result in  
11 the availability of transportation facilities to the public in a  
12 more timely or less costly manner, thereby serving the public  
13 health, safety, convenience and welfare and the enhancement  
14 of the residential, agricultural, recreational, economic,  
15 commercial and industrial opportunities;

16 (4) That providing a mechanism for the solicitation,  
17 receipt and consideration of proposals submitted by private  
18 entities for the purposes described in this section serves the  
19 public purpose of this article to the extent that the action  
20 facilitates the timely acquisition or construction of or  
21 improvement to a qualifying transportation facility or the  
22 continued operation of a qualifying transportation facility;  
23 and

24 (5) That providing for the expansion and acceleration of  
25 transportation financing using innovative financing  
26 mechanisms, including, but not limited to, design-build  
27 contracting and financing arrangements, will add to the  
28 convenience of the public and allow public and private  
29 entities to have the greatest possible flexibility in contracting  
30 with each other for the provision of the public services which  
31 are the subject of this article.

**§17-27-2. Definitions.**

1 As used in this article, the following words and terms  
2 have the following meanings:

3 (1) “Comprehensive agreement” means the  
4 comprehensive agreement by and between a developer and  
5 the division required by section nine of this article.

6 (2) “Department” means the Department of  
7 Transportation.

8 (3) “Developer” means the private entity that is  
9 responsible for the acquisition, construction or improvement  
10 of a qualifying transportation facility.

11 (4) “Division” means the Division of Highways.

12 (5) “Material default” means any default by the developer  
13 in the performance of its duties under subsection (f), section  
14 eight of this article that jeopardizes adequate service to the  
15 public from a qualifying transportation facility and remains  
16 unremedied after the division has provided notice to the  
17 developer and a reasonable cure period has elapsed.

18 (6) “Private entity” means any natural person,  
19 corporation, limited liability company, partnership, joint  
20 venture or other private business entity.

21 (7) “Public entity” means the state of West Virginia or  
22 any political subdivision thereof.

23 (8) “Qualifying transportation facility” means one or  
24 more transportation facilities acquired, constructed or  
25 improved by a private entity pursuant to this article.

26 (9) “Revenues” mean the user fees or service payments  
27 generated by a qualifying transportation facility.

28 (10) “Service contract” means a contract entered into  
29 between a public entity and a developer pursuant to section  
30 six of this article.

31 (11) “Service payments” mean payments to the developer  
32 of a qualifying transportation facility pursuant to a service  
33 contract.

34 (12) “State” means the state of West Virginia.

35 (13) "Transportation facility" means any public inland  
36 waterway port facility, road, bridge, tunnel, overpass or  
37 existing airport used for the transportation of persons or  
38 goods, and the structures, equipment, facilities or  
39 improvements necessary or incident thereto.

40 (14) "User fees" mean the rates, tolls, fees or other  
41 charges imposed by the developer of a qualifying  
42 transportation facility for use of all or a portion of the  
43 qualifying transportation facility pursuant to the  
44 comprehensive agreement.

**§17-27-3. Prerequisites for development.**

1 Any private entity seeking authorization under this article  
2 to acquire, construct or improve a transportation facility shall  
3 first submit a conceptual proposal as set forth in section five  
4 of this article: *Provided*, That notwithstanding any provision  
5 of this code to the contrary, the division has no duty to  
6 accept, consider or review a conceptual proposal that is not  
7 solicited by the division. The private entity may initiate the  
8 approval process pursuant to subsections (a) and (b) of said  
9 section or the division may alternatively request proposals  
10 pursuant to subsection (c) of said 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  
2 in this code, the division and any other agency that is part of  
3 the department may:

4 (1) Undertake one level of review for each proposal  
5 submitted by a private entity in accordance with this article.  
6 The review shall consist of the review by the division of the  
7 conceptual proposal: *Provided*, That expenses of the division

8 incurred for review of proposal shall be paid by the private  
9 entity submitting the proposal. The division shall take into  
10 account at all times the needs and funding capabilities of the  
11 state as a whole in terms of transportation;

12 (2) Enter into agreements, contracts or other transactions  
13 with any agency that is part of the department, any federal,  
14 state, county, municipal agency or private entity;

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

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

27 (5) Exempt from disclosure any documents,  
28 communications or information described in this section  
29 including, but not limited to, the project's design,  
30 management, financing and other details in accordance with  
31 the provisions of article one, chapter twenty-nine-b of this  
32 code; and

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

**§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  
2 conceptual proposal for a transportation facility to the  
3 division for consideration. The conceptual proposal shall  
4 include the following:

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

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

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

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

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

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

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

26 (2) A description of the transportation facility or  
27 facilities, including the conceptual design of the facility or



28 facilities and all proposed interconnections with other  
29 transportation facilities;

30 (3) The projected total life-cycle cost of the transportation  
31 facility or facilities and the proposed date for acquisition of  
32 or the beginning of construction of, or improvements to, the  
33 transportation facility or facilities;

34 (4) A statement setting forth the method by which the  
35 developer proposes to secure all property interests required  
36 for the transportation facility or facilities: *Provided*, That  
37 with the approval of the division, the private entity may  
38 request that the comprehensive agreement assign the division  
39 with responsibility for securing all property interests,  
40 including public utility facilities, with all costs, including  
41 costs of acquiring the property, to be reimbursed to the  
42 division by the private entity. The statement shall include the  
43 following information regarding the property interests or  
44 rights, including, but not limited to, rights to extract mineable  
45 minerals:

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

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

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

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

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

56 (6) A list of all permits and approvals required for  
57 acquisition or construction of or improvements to the  
58 transportation facility or facilities from local, state or federal  
59 agencies and a projected schedule for obtaining the permits  
60 and approvals: *Provided*, That the acquisition, construction,  
61 improvement or operation of a qualifying transportation  
62 facility that includes the extraction of mineable minerals is  
63 required to obtain all necessary permits or approvals from all  
64 applicable authorities in the same manner as if it were not a  
65 qualifying transportation facility under this article;

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

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

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

76 (10) Information about the developer, including, but not  
77 limited to, an organizational chart of the developer,  
78 capitalization of the developer, experience in the operation of  
79 transportation facilities and references and certificates of  
80 good standing from the Tax Commissioner, Insurance  
81 Commissioner and the Division of Unemployment  
82 Compensation evidencing that the developer is in good  
83 standing with state tax, workers' compensation and  
84 unemployment compensation laws, respectively; and

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

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

92 (e) The division may solicit any proposal for the  
93 acquisition, construction or improvement of the  
94 transportation facility or facilities as a qualifying  
95 transportation facility if it is determined that it serves the  
96 public purpose of this article. The division may determine  
97 that the acquisition, construction or improvement of the  
98 transportation facility or facilities as a qualifying  
99 transportation facility serves a public purpose if:

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

103 (2) The transportation facility and the proposed  
104 interconnections with existing transportation facilities and the  
105 developer's plans for development of the qualifying  
106 transportation facility are reasonable and compatible with the  
107 state transportation plan and with the local comprehensive  
108 plan or plans;

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

111 (4) The acquisition, construction, improvement or the  
112 financing of the transportation facilities does not involve any  
113 moneys from the State Road Fund unless those moneys from  
114 the State Road Fund serve as a required match for federal  
115 funds specifically earmarked in a federal authorization or  
116 appropriation bill for a transportation facility to be acquired,  
117 constructed or equipped pursuant to this article: *Provided,*

118 That the dedication of State Road Fund moneys in any fiscal  
119 year as state required match for the federal earmark does not  
120 exceed four percent of the immediate preceding three fiscal  
121 years average of division's construction contracts awarded  
122 under the competitive bid process: *Provided, however,* That  
123 the moneys from the General Revenue Fund may also be  
124 used if so designated and approved by the Legislature.

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

130 (6) The private entity's plans will result in the timely  
131 acquisition or construction of or improvements to the  
132 transportation facility for their more efficient operation and  
133 that the private entity's plans will result in a more timely and  
134 economical delivery of the transportation facility than  
135 otherwise available under existing delivery systems.

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

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

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

146 (g) In connection with its approval of the development of  
147 the transportation facility as a qualifying transportation

148 facility, the division shall establish a date for the acquisition  
149 of or the beginning of construction of or improvements to the  
150 qualifying transportation facility. The division may extend  
151 that date.

152 (h) Selection by the Commissioner of Highways.

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

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

**§17-27-6. Service contracts.**

1 In addition to any authority otherwise conferred by law,  
2 any public entity may contract for services to be provided for  
3 a qualifying transportation facility in exchange for service  
4 payments and other consideration as the division determines  
5 appropriate.

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

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

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

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

6 (b) The developer may own, lease or acquire any other  
7 right to facilitate the development of the qualifying  
8 transportation facility.

9 (c) Any financing of the qualifying transportation facility  
10 may be in the amounts and upon terms and conditions  
11 determined by the developer. The developer may issue debt,  
12 equity or other securities or obligations, enter into sale and  
13 leaseback transactions and secure any financing with a pledge  
14 of, security interest in, or lien on, any or all of its property,  
15 including all of its property interests in the qualifying  
16 transportation facility.

17 (d) Subject to applicable permit requirements, the  
18 developer may cross any canal or navigable watercourse as  
19 long as the crossing does not unreasonably interfere with then  
20 current navigation and use of the waterway.

21 (e) In developing the qualifying transportation facility,  
22 the developer may:

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

25 (2) With the consent of the division, make and enforce  
26 reasonable rules to the same extent that the division may  
27 make and enforce rules with respect to a similar  
28 transportation facility. The developer may, by agreement

29 with appropriate law-enforcement agencies, arrange for video  
30 enforcement in connection with its toll collection activities.

31 (f) The developer shall:

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

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

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

40 (2) Keep the qualifying transportation facility open for  
41 use by the members of the public at all times after its initial  
42 opening upon payment of the applicable user fees or service  
43 payments: *Provided*, That the qualifying transportation  
44 facility may be temporarily closed because of emergencies  
45 or, with the consent of the division, to protect the safety of  
46 the public or for reasonable construction or maintenance  
47 procedures;

48 (3) Contract for the performance of all maintenance and  
49 operation of the transportation facility through the division,  
50 using its maintenance and operations practices, until the date  
51 of termination of the developer's duties as defined in the  
52 comprehensive agreement;

53 (4) Cooperate with the division in establishing any  
54 interconnection with the qualifying transportation facility  
55 requested by the division;

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

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

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

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

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

9 (2) Review and approval of the final plans and  
10 specifications for the qualifying transportation facility by the  
11 division;

12 (3) Inspection of the construction of or improvements to  
13 the qualifying transportation facility to ensure that they  
14 conform to the engineering standards acceptable to the  
15 division;

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



25 (5) Monitoring of the maintenance and operating  
26 practices of the developer by the division and the taking of  
27 any actions the division finds appropriate to ensure that the  
28 qualifying transportation facility is properly maintained and  
29 operated;

30 (6) Itemization and reimbursement to be paid to the  
31 division for the review and any services provided by the  
32 division;

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

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

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

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

44 (b) The comprehensive agreement may require user fees  
45 established by agreement of the parties. Any user fees shall  
46 be set at a level that, taking into account any service  
47 payments, allows the developer the rate of return on its  
48 investment specified in the comprehensive agreement:  
49 *Provided*, That the schedule and amount of the initial user  
50 fees to be imposed and any increase of the user fees must be  
51 approved by the Commissioner of the Division of Highways.  
52 A copy of any service contract shall be filed with the  
53 division. A schedule of the current user fees shall be made  
54 available by the developer to any member of the public on

55 request. In negotiating user fees under this section, the  
56 parties shall establish fees that are the same for persons using  
57 the facility under like conditions and that will not  
58 unreasonably discourage use of the qualifying transportation  
59 facility. The execution of the comprehensive agreement or  
60 any amendment to the comprehensive agreement constitutes  
61 conclusive evidence that the user fees provided in the  
62 comprehensive agreement comply with this article. User fees  
63 established in the comprehensive agreement as a source of  
64 revenues may be in addition to, or in lieu of, service  
65 payments.

66 (c) In the comprehensive agreement, the division may  
67 agree to accept grants or loans from the developer, from time  
68 to time, from amounts received from the state or federal  
69 government or any agency or instrumentality of the state or  
70 federal government.

71 (d) The comprehensive agreement shall incorporate the  
72 duties of the developer under this article and may contain any  
73 other terms and conditions that the division determines serve  
74 the public purpose of this chapter. Without limitation, the  
75 comprehensive agreement may contain provisions under  
76 which the division agrees to provide notice of default and  
77 cure rights for the benefit of the developer and the persons  
78 specified in the comprehensive agreement as providing  
79 financing for the qualifying transportation facility. The  
80 comprehensive agreement may contain any other lawful  
81 terms and conditions to which the developer and the division  
82 mutually agree, including, without limitation, provisions  
83 regarding unavoidable delays or provisions providing for a  
84 loan of public funds to the developer to acquire, construct or  
85 improve one or more qualifying transportation facilities.

86 (e) The comprehensive agreement shall require the  
87 deposit of any earnings in excess of the maximum rate of

88 return as negotiated in the comprehensive agreement in the  
89 Economic Development Project Bridge Loan Fund  
90 established pursuant to section eighteen-a, article twenty-two,  
91 chapter twenty-nine of this code.

92 (f) Any changes in the terms of the comprehensive  
93 agreement, agreed upon by the parties and subject to the  
94 requirements of subsection (h) of this section, shall be added  
95 to the comprehensive agreement by written amendment.

96 (g) Notwithstanding any provision of this article to the  
97 contrary, the division may not enter into any comprehensive  
98 agreements with a developer after the thirtieth day of June,  
99 two thousand thirteen.

100 (h) Notwithstanding any provision of this article to the  
101 contrary, the division may not enter into any comprehensive  
102 agreements with a developer after the thirtieth day of June,  
103 two thousand thirteen.

104 (i) Notwithstanding any provision of this article to the  
105 contrary, the division may not enter into a comprehensive  
106 agreement until the comprehensive agreement has been  
107 approved by the Legislature by the adoption of a concurrent  
108 resolution: *Provided*, That all voting on the floor of both  
109 houses on the question of the adoption of any concurrent  
110 resolution approving a comprehensive agreement shall be by  
111 yeas and nays to be entered on the Journals. If the  
112 Legislature approves the comprehensive agreement, the  
113 division shall submit the comprehensive agreement to the  
114 Governor for his or her approval or disapproval.

**§17-27-10. Federal, state and local assistance.**

1 The division may take any action to obtain federal, state  
2 or local assistance for a qualifying transportation facility that

3 serves the public purpose of this article and may enter into  
4 any contracts required to receive federal assistance. The  
5 division may determine that it serves the public purpose of  
6 this article for all or any portion of the costs of a qualifying  
7 transportation facility to be paid, directly or indirectly, from  
8 the proceeds of a grant or loan made by the local, state or  
9 federal government or any agency or instrumentality thereof.

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

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

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

14 (2) To exercise the power of condemnation to acquire the  
15 qualifying transportation facility or facilities. Any person  
16 who has provided financing for the qualifying transportation  
17 facility and the developer, to the extent of its capital  
18 investment, may participate in the condemnation proceedings  
19 with the standing of a property owner;

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

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

27 (b) In the event the division elects to take over a  
28 qualifying transportation facility pursuant to subdivision (1),  
29 subsection (a) of this section, the division may acquire,  
30 construct or improve the transportation facility, impose user  
31 fees for the use of the transportation facility and comply with  
32 any service contracts as if it were the developer. Any  
33 revenues that are subject to a lien shall be collected for the  
34 benefit of, and paid to, secured parties, as their interests may  
35 appear, to the extent necessary to satisfy the developer's  
36 obligations to secured parties, including the maintenance of  
37 reserves and the liens shall be correspondingly reduced and,  
38 when paid off, released. Remaining revenues, if any, after all  
39 payments to, or for the benefit of, secured parties shall be  
40 paid to the developer, subject to the negotiated maximum rate  
41 of return. The right to receive the payment, if any, shall be  
42 considered just compensation for the transportation facility or  
43 facilities. The full faith and credit of the division may not be  
44 pledged to secure any financing of the developer by the  
45 election to take over the qualifying transportation facility.  
46 Assumption of development of the qualifying transportation  
47 facility does not obligate the division to pay any obligation of  
48 the developer from sources other than revenues.

**§17-27-12. Governmental entities prohibited from pledging full  
faith and credit.**

1 The full faith and credit of the state, or any county,  
2 municipality or political subdivision of the state may not be  
3 pledged to secure any financing of the developer in  
4 connection with the acquisition, construction or equipping of  
5 a qualifying transportation facility.

**§17-27-13. Condemnation.**

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

13 (b) Until the division has provided written certification as  
14 to the existence of a material default under subsection (a),  
15 section eleven of this article, the power of condemnation may  
16 not be exercised against a qualifying transportation facility.

**§17-27-14. Utility crossings.**

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

15 improvement. Any amount to be paid for the crossing,  
16 construction, moving or relocating of facilities shall be paid  
17 by the developer.

**§17-27-15. Dedication of assets.**

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

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

1 All qualifying transportation facilities authorized under  
2 this article are public improvements and are subject to article  
3 five-a, chapter twenty-one of this code. Article twenty-two,  
4 chapter five of this code applies to all qualifying  
5 transportation facilities authorized under this article. All  
6 construction, reconstruction, repair or improvement of  
7 qualifying transportation facilities authorized under this  
8 article shall be awarded by competitive bidding. Competitive  
9 bids shall be solicited by the division for each construction  
10 contract in excess of twenty-five thousand dollars in total  
11 cost. Construction costs should be of sufficient size that the  
12 performance and payment bonds are in the ten million to  
13 thirty million dollar range, where possible. Competitive bids  
14 shall be solicited by the division through publication of a  
15 Class II legal advertisement, in compliance with the  
16 provisions of article three, chapter fifty-nine of this code, and  
17 the publication area is the county or municipality in which  
18 the transportation facility is to be located. The advertisement  
19 shall also be published as a Class II advertisement in a  
20 newspaper of general circulation published in the city of

21 Charleston. The advertisement shall solicit sealed proposals  
 22 for the construction of the transportation facility, stating the  
 23 time and place for the opening of bids. All bids shall be  
 24 publicly opened and read aloud. Construction contracts shall  
 25 be awarded to the lowest qualified responsible bidder, who  
 26 shall furnish a sufficient performance or payment bond:  
 27 *Provided.* That both the division and the private entity have  
 28 the right to reject all bids and solicit new bids for the  
 29 construction contract. The provisions of article one-c, chapter  
 30 twenty-one of this code apply to the construction of all  
 31 qualifying transportation facilities approved under this  
 32 article.

**§17-27-17. Exemptions from taxation.**

1 (a) The exercise of the powers granted in this article will  
 2 be in all respects for the benefit of the people of this state, for  
 3 the improvement of their health, safety, convenience and  
 4 welfare and for the enhancement of their residential,  
 5 agricultural, recreational, economic, commercial and  
 6 industrial opportunities and is a public purpose. As the  
 7 construction, acquisition, improvement, operation and  
 8 maintenance of qualifying transportation facilities will  
 9 constitute the performance of essential governmental  
 10 functions, a developer is not required to pay any taxes or  
 11 assessments upon any qualifying transportation facility or  
 12 any property acquired or used by the developer under the  
 13 provisions of this article or upon the income therefrom, other  
 14 than taxes collected from the consumer pursuant to article  
 15 fifteen, chapter eleven of this code.


**§17-27-18. Construction.**

1 The provisions of this article are remedial and shall be  
 2 liberally construed and applied so as to promote the purposes  
 3 set out in section one of this article.



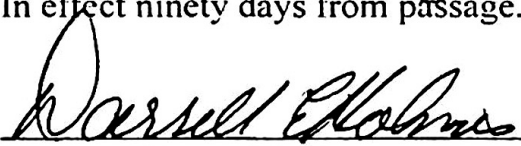
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
\_\_\_\_\_  
Chairman Senate Committee

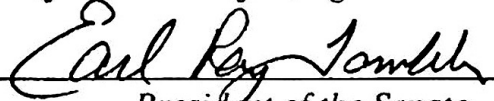
  
\_\_\_\_\_  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 18<sup>th</sup>  
day of April, 2008.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 25 2008

Time 10:35 am