

1 State Road Fund when the projects are in excess of
2 \$20 million, constructed by the Division of Highways and
3 contained in its six-year plan; providing that any earnings in
4 excess of maximum rate of return that is negotiated in
5 comprehensive agreements be deposited in the State Road Fund;
6 eliminating a sunset provision prohibiting comprehensive
7 agreements for public-private partnership projects after June
8 30, 2013; eliminating the requirement that a comprehensive
9 agreement for public-private partnership projects be approved
10 by concurrent resolution of the Legislature and be submitted
11 to the Governor for his or her approval or disapproval before
12 the Division of Highways enters into the comprehensive
13 agreement; and mandating that the Division of Highways provide
14 a copy of any comprehensive agreement to the Legislature's
15 Joint Committee on Government and Finance at least thirty days
16 prior to said agreement being executed by the Division of
17 Highways for a public-private partnership project.

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

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

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

22 **§17-27-5. Submission and review of conceptual proposals; approval**

1 **by the Commissioner of Highways.**

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

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

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

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

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

15 (b) Following review by the division, the division shall
16 submit to the Commissioner of Highways the conceptual proposals and
17 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 division
20 with respect to the transportation facility or facilities that the
21 private entity proposes to develop as a qualifying transportation
22 facility:

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

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

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

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

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

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

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

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

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

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

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

1 facilities and a statement of the plans of the developer to
2 accommodate the crossings or relocations;

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (f) Notwithstanding any provision of this article to the

1 contrary, the recommendation of the division to the Commissioner of
2 Highways is subject to:

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

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

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

14 (h) Selection by the Commissioner of Highways:

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

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

19 **§17-27-9. Comprehensive agreement.**

20 (a) Prior to acquiring, constructing or improving the
21 qualifying transportation facility, the developer shall enter into
22 a comprehensive agreement with the division. The comprehensive

1 agreement shall provide for:

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

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

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

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

20 (5) Monitoring of the maintenance and operating practices of
21 the developer by the division and the taking of any actions the
22 division finds appropriate to ensure that the qualifying

1 transportation facility is properly maintained and operated;

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

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

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

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

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

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

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

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

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

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

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

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

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

22 ~~(h) Notwithstanding any provision of this article to the~~

1 ~~contrary, the division may not enter into any comprehensive~~
2 ~~agreements with a developer after the thirtieth day of June, two~~
3 ~~thousand thirteen.~~

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

(NOTE: The purpose of this bill is to allow the Division of Highways to participate in funding a needed public-private transportation project, to eliminate the sunset provision for comprehensive agreements for public-private partnership projects currently set for June 30, 2013, and to require the division to provide a copy of a comprehensive agreement to the Joint Committee on Government and Finance at least thirty days prior to said

agreement being executed by the Commissioner of Highways.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)

FINANCE COMMITTEE AMENDMENTS

On page thirteen, section nine, line eighteen, after the word "contrary", by inserting the following: "the division may not enter into any comprehensive agreements with a developer after June 30, 2017.

(h) Notwithstanding any provision of this article to the contrary,".

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Senate Bill No. 190--A Bill to amend and reenact §17-27-5 and §17-27-9 of the Code of West Virginia, 1931, as amended, all relating to the funding of transportation public-private partnership projects and their corresponding comprehensive agreements; eliminating requirement that money from the State Road Fund only be used for public-private partnership projects where the money serves as a required match for federal funds specifically earmarked in a federal authorization or appropriation bill and does not exceed four percent of the immediate preceding three fiscal years' average of the Division of Highway's construction contracts awarded under the competitive bid process; allowing public-private partnership projects to use money from the State Road Fund when the projects are in excess of \$20 million, constructed by the Division of Highways and contained in its six-year plan; providing that any earnings in excess of maximum rate of return that is negotiated in comprehensive agreements be deposited in the State Road Fund; providing a sunset provision prohibiting comprehensive agreements for public-private partnership projects after June 30, 2017; eliminating the requirement that a comprehensive agreement for public-private partnership projects be approved by concurrent resolution of the Legislature and be submitted to the Governor for his or her approval or disapproval before the Division of Highways

enters into the comprehensive agreement; and mandating that the Division of Highways provide a copy of any comprehensive agreement to the Legislature's Joint Committee on Government and Finance at least thirty days prior to said agreement being executed by the Division of Highways for a public-private partnership project.