

HB 4476

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2008

ENROLLED

House Bill No. 4476

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

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

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

[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.



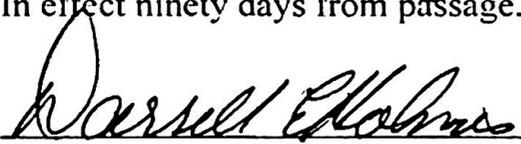
Chairman Senate Committee



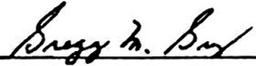
Chairman House Committee

Originating in the House.

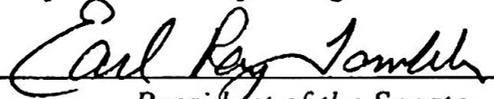
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

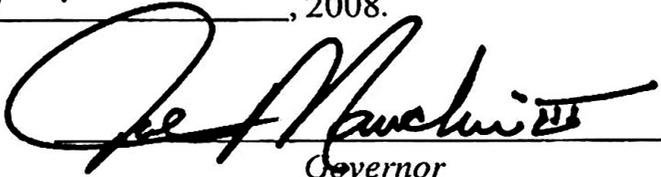


President of the Senate



Speaker of the House of Delegates

The within is approved this the 18th
day of April, 2008.



Governor

PRESENTED TO THE
GOVERNOR

MAR 25 2008

Time 10:35 am