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SENATE BILL NO. 887

Offered January 8, 2025

Prefiled January 3, 2025

A BILL to amend and reenact § 56-542 of the Code of Virginia, relating to Virginia Highway Corporation Act of 1988; Dulles Greenway; toll rates.

Patrons—Perry and Srinivasan

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:**1. That § 56-542 of the Code of Virginia is amended and reenacted as follows:****§ 56-542. Powers of the Commission.**

A. As used in this section:

"CPI" means the Consumer Price Index — U.S. City Averages for All Urban Consumers, All Items (not seasonally adjusted) as reported by the U.S. Department of Labor, Bureau of Labor Statistics; however, if the CPI is modified such that the base year of the CPI changes, the CPI shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics, and if the CPI is discontinued or revised, such other historical index or computation approved by the Commission shall be used for purposes of this section that would obtain substantially the same result as would have been obtained if the CPI had not been discontinued or revised.

"Depreciated original cost" means original cost less depreciation reflected on the operator's books. Depreciation shall be calculated on a straight-line basis over the physical life of the asset or the entire term of the concession, whichever is less, unless the operator obtains specific approval from the Commission to calculate depreciation on a different basis.

"Materially discourage use" means to cause a decrease in traffic of three or more percentage points based on either a change in potential toll road users or a change in traffic attributable to the toll rate charged as validated by (i) an investment-grade travel demand model that takes population growth into consideration or (ii) in the case of an investigation into current toll rates, an actual traffic study that takes population growth into consideration.

"Original cost" means the actual capital investment in toll road infrastructure to the first party that committed or placed these facilities in the regulated service. "Original cost" does not include revenues or deferred earnings that were accrued but unearned in prior periods.

"Real GDP" means the Annual Real Gross Domestic Product as reported by the U.S. Department of Commerce, Bureau of Economic Analysis.

"Reasonable return" means the return calculated on the basis of the depreciated original cost of the facilities actually invested in toll road infrastructure and currently in service. In calculating a reasonable return, the Commission shall allow the operator to charge toll rates that allow the operator the opportunity to recover all prudently incurred operating expenses. Costs related to imprudent operating expenses or capital expenditures shall not be included in the tolls charged by the operator. Imprudent operating expenses shall include any costs that are not reasonable or any costs that are not directly related to and necessary for providing toll road service. Any debt service costs, including transactions-related costs, relating to debt in excess of the original cost of facilities shall not be included as part of the calculation of reasonable return. The reasonable return calculated shall provide the operator with an opportunity to earn a return commensurate with the returns available for investments of similar risk as determined based on comparable market data.

"Reasonable to the user in relation to the benefit obtained" means that rates shall be set reflecting the regulatory principle of cost causation wherein the operator's actual costs, including a reasonable return as defined in this section, will be allocated across all users' toll route equitably. The operator will be allowed to discount tolls below this level, provided that it does so in an equitable and nondiscriminatory manner across all users.

B. The Commission shall have the power to regulate the operator under this title as a public service corporation. The Commission shall also have the power, and be charged with the duties of reviewing and approving or denying the application, of supervising and controlling the operator in the performance of its duties under this chapter and title, and of correcting any abuse in the performance of the operator's public duties.

C. Pursuant to § 56-36, the Commission shall require annually from the operator a verified report describing the nature of its contractual and other relationships with individuals or entities contracting with the operator for the provision of significant financial, construction, or maintenance services. The Commission

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shall review the report and such other materials as it shall deem necessary for the purpose of determining improper or excessive costs, and shall exclude from the operator's costs any amounts which it finds are improper or excessive. Included in such review shall be consideration of contractual relationships between the operator and individuals or entities that are closely associated or affiliated with the operator to assure that the terms of such contractual relationships are no less favorable or unfavorable to the operator than what it could obtain in an arm's-length transaction.

D. The Commission also shall have the duty and authority to approve or revise the toll rates charged by the operator. Initial rates shall be approved if they appear reasonable to the user in relation to the benefit obtained, not likely to materially discourage use of the roadway, and provide the operator no more than a reasonable return as determined by the Commission. Thereafter, the Commission, upon application, complaint or its own initiative, and after investigation, may order substituted for any toll being charged by the operator, a toll which is set at a level which is reasonable to the user in relation to the benefit obtained and which will not materially discourage use of the roadway by the public and which will provide the operator no more than a reasonable return as determined by the Commission. Any proposed toll rates that fail to meet these criteria as determined by the Commission are contrary to the public interest, and the Commission shall not approve such toll rates. *Toll rates shall not materially discourage the public's use of the toll road, and the cost of operating the toll road shall be reasonably apportioned across all toll road users based on the relative distance each class of user travels on the toll road, such that the toll rates are established in a reasonable and nondiscriminatory manner in relation to the benefit obtained, and toll rates shall provide the operator with no more than a reasonable return.*

Any application to increase toll rates shall include a forward-looking analysis that demonstrates that the proposed toll rates will be reasonable to the user in relation to the benefit obtained, not likely to materially discourage use of the roadway, and provide the operator no more than a reasonable return. Such forward-looking analysis shall include reasonable projections of anticipated traffic levels, including the impact of social and economic conditions anticipated during the time period that the proposed toll rates would be in effect. The Department shall review and provide comments upon the analysis to the Commission. Notwithstanding any other provision of law, the Commission shall not approve more than one year of toll rate increases proposed by the operator.

E. If a change in the ownership of the facility or change in control of an operator occurs, whether or not accompanied by the issuance of securities as defined in subsection A of § 56-57 and § 56-65.1, the Commission, in any subsequent proceeding to set the level of a toll charged by the operator, shall ensure that the price paid in connection with the change in ownership or control, and any costs and other factors attributable to or resulting from the change in ownership or control, if they would contribute to an increase in the level of the toll, are excluded from the Commission's determination of the operator's reasonable return, in order to ensure that a change in ownership or control does not increase the level of the toll above that level that would otherwise have been required under subsection D if the change in ownership or control had not occurred. As used in this subsection, "control" has the same meaning as provided in § 56-88.1.

F. Pursuant to § 56-36, the Commission shall require an operator to provide copies of annual audited financial statements for the operator, together with a statement of the operator's ownership. The operator shall file such statement within four months from the end of the operator's fiscal year.

G. The proceeds and funding provided to the operator from any future bond indenture or similar credit agreement must be used for the purpose of refinancing existing debt, acquiring, designing, permitting, building, constructing, improving, equipping, modifying, maintaining, reconstructing, restoring, rehabilitating, or renewing the roadway property, and for the purpose of paying reasonable arm's-length fees, development costs, and expenses incurred by the operator or a related individual or entity in executing such financial transaction, unless otherwise authorized by the Commission.

H. The Commission may charge a reasonable annual fee to cover the costs of supervision and controlling the operator in the performance of its duties under this chapter and pursuant to this section.

I. Any agreement between the operator and the Department made pursuant to this chapter shall not be construed to alter the duties, obligations, or powers of the Commission set forth in this chapter.

J. Prior to refinancing existing debt, an operator shall petition the Commission for approval to refinance such debt. The Commission may approve such petition only if the operator demonstrates (i) that it has the financial capability to pay off the debt incurred in the refinancing over the term of the bond, loan, or similar instrument; (ii) that the term of the bond, loan, or similar instrument does not extend beyond the expiration of the operator's current certificate of authority; (iii) that such refinancing will not increase toll rates; and (iv) that such refinancing is in the public interest.