

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 56-542 of the Code of Virginia, relating to State Corporation Commission;*
 3 *toll rate increases; duration and timeline for review.*

4 [H 1127]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 56-542 of the Code of Virginia is amended and reenacted as follows:**8 **§ 56-542. Powers of the Commission.**

9 A. As used in this section:

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

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

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

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

29 C. Pursuant to § 56-36, the Commission shall require annually from the operator a verified report
 30 describing the nature of its contractual and other relationships with individuals or entities contracting with the
 31 operator for the provision of significant financial, construction, or maintenance services. The Commission
 32 shall review the report and such other materials as it shall deem necessary for the purpose of determining
 33 improper or excessive costs, and shall exclude from the operator's costs any amounts which it finds are
 34 improper or excessive. Included in such review shall be consideration of contractual relationships between
 35 the operator and individuals or entities that are closely associated or affiliated with the operator to assure that
 36 the terms of such contractual relationships are no less favorable or unfavorable to the operator than what it
 37 could obtain in an arm's-length transaction.

38 D. The Commission also shall have the duty and authority to approve or revise the toll rates charged by
 39 the operator. Initial rates shall be approved if they appear reasonable to the user in relation to the benefit
 40 obtained, not likely to materially discourage use of the roadway, and provide the operator no more than a
 41 reasonable return as determined by the Commission. Thereafter, the Commission, upon application,
 42 complaint or its own initiative, and after investigation, may order substituted for any toll being charged by the
 43 operator, a toll which is set at a level which is reasonable to the user in relation to the benefit obtained and
 44 which will not materially discourage use of the roadway by the public and which will provide the operator no
 45 more than a reasonable return as determined by the Commission. Any proposed toll rates that fail to meet
 46 these criteria as determined by the Commission are contrary to the public interest, and the Commission shall
 47 not approve such toll rates.

48 Any application to increase toll rates shall include a forward-looking analysis that demonstrates that the
 49 proposed toll rates will be reasonable to the user in relation to the benefit obtained, not likely to materially
 50 discourage use of the roadway, and provide the operator no more than a reasonable return. Such
 51 forward-looking analysis shall include reasonable projections of anticipated traffic levels, including the
 52 impact of social and economic conditions anticipated during the time period that the proposed toll rates
 53 would be in effect. The Department shall review and provide comments upon the analysis to the Commission.
 54 Notwithstanding any other provision of law, the Commission shall not approve more than ~~one year~~ *two years*
 55 of toll rate increases proposed by the operator. *The Commission's final order regarding any application for*
 56 *approval of one year or two years of toll rate increases shall be entered within nine months or 12 months,*

57 *respectively, after the date of the filing of such application.*

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

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

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

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

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

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