~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 26, 2009

**S. 521**

Introduced by Senators Grooms, Rankin, Campbell and Rose

S. Printed 3/26/09--S. [SEC 3/27/09 12:07 PM]

Read the first time March 4, 2009.

**THE COMMITTEE ON TRANSPORTATION**

To whom was referred a Bill (S. 521) to enact the “Transportation Infrastructure Funding Flexibility Act”, by amending Chapter 3, Title 57 of the 1976 Code, relating to the state highway system, by adding Article 3, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. This act may be referred to and cited as the “Transportation Infrastructure Funding Flexibility Act”.

SECTION 2. Chapter 3, Title 57 of the 1976 Code is amended by adding:

“Article 3

Public‑Private Initiatives

Section 57‑3‑300. As used in this article:

(1) ‘Affected jurisdiction’ means any county, city, town, municipal corporation, or other political subdivision within the State in which all or part of a transportation facility is located or any other public entity directly affected by the transportation facility.

(2) ‘Board’ means the State Budget and Control Board.

(3) ‘Department’ means the South Carolina Department of Transportation.

(4) ‘Existing transportation facility’ means a transportation facility not subject to a public‑private partnership agreement and open and operating as of January 1, 2009.

(5) ‘Independent financial consultant’ means a private entity that the department shall contract with to provide consulting services related to and a critical analysis of the anticipated financial structure of the partnership agreement. Prior to the execution of the partnership agreement, the consultant’s report must be provided to the Department of Transportation Commission and the State Budget and Control Board.

(6) ‘Objective index’ means a generally accepted official index sanctioned by the state or federal government intended to measure inflation or economic growth, including, but not limited to, the Consumer Price Index or indices tracking gross domestic product.

(7) ‘Operator’ means a private entity that is financing, managing, administering, maintaining, improving, equipping, or modifying a transportation facility pursuant to a partnership agreement.

(8) ‘Partnership agreement’ means the contract entered into pursuant to this article between a private entity and the department containing the terms and conditions under which a public‑private initiative will be carried out.

(9) ‘Private entity’ means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, non‑profit entity, or other business entity.

(10) ‘Public interest’ means a balancing of the following factors:

(a) whether the project under consideration contributes to the general welfare and convenience of the people of this State;

(b) whether the project delivery method under consideration is:

(i) the most advantageous to the State and the public as a whole;

(ii) likely to result in the most timely, economical, and successful completion of the project;

(iii) likely to result in the economical and efficient management, maintenance, and operation of the transportation facility;

(c) the long and short term consideration of the impact the delivery method under consideration will have on all users; and

(d) local circumstances and conditions in the affected jurisdiction.

(11) ‘Public‑private initiative’ means an arrangement between the department and a private entity, the terms and conditions of which are stated in a partnership agreement.

(12) ‘Responder’ means a private entity that responds to a request for qualifications or a request for proposal, as appropriate.

(13) ‘Transportation facility’ means any existing or new highway, road, bridge, tunnel, toll road, overpass, ferry, mass transit facility, vehicle parking facility, rail facility, intermodal facility, or similar facility open to the public and used for the transportation of persons or goods, together with any buildings, structures, parking areas, appurtenances, or other property needed to operate such facility. A commercial or retail use or enterprise not essential to the transportation of persons or goods shall not be a ‘transportation facility’.

(14) ‘User fees’ means the rate, toll, fee, or other charges imposed by the department and collected by a private entity pursuant to a partnership agreement for use of all or part of a transportation facility.

Section 57‑3‑310. The department may enter into public‑private initiatives for transportation facilities using the design‑build‑operate‑maintain or design‑build‑finance‑operate‑maintain project delivery methods, as defined in Section 11‑35‑2910, only if upon thorough analysis the department determines in writing that for that particular transportation facility a public‑private initiative is in the public interest. The written determination must also address, in general terms, the anticipated financial structure and the anticipated term of the public‑private initiative. The department must post its determination and supporting analysis in a conspicuous location on its internet website.

Section 57‑3‑320. This article does not apply to contracts using the design‑build or the design‑bid‑build project delivery methods, as defined in Section 11‑35‑2910.

Section 57‑3‑330. (A) Subject to the provisions of this article, the department may solicit, receive, consider, evaluate, and accept proposals for a public‑private initiative.

(B) The department may not consider, evaluate, or accept unsolicited proposals for a public‑private initiative.

(C) An existing transportation facility may not be the subject of a public‑private initiative. However, if new capacity or lanes are added to an existing transportation facility, then the additional capacity or new lanes may be the subject of a public‑private initiative.

Section 57‑3‑340. The department may solicit proposals for public‑private initiatives only pursuant to a request for qualifications and a request for proposals that have been approved by the board.

Section 57‑3‑350. (A) After the department makes and posts the written determination required by Section 57‑3‑310, the department must first prepare a request for qualifications and submit the request for qualifications to the board for approval. This prequalification process must comply with Section 11‑35‑3023. Before the date set for submission, the department shall provide adequate public notice of the request for qualifications. The notice must be designed to successfully communicate with a broad spectrum of prospective responders. The date set for submissions from interested private entities must be no less than fifteen days after the department formally issues the request for qualifications.

(B) To approve a request for qualifications, the board must determine whether the request requires responders to submit information detailed enough and sufficient for the department to make an informed decision concerning the responder’s relative qualifications.

(C) The department may issue the request for qualifications upon approval by the board.

(D) The department may interview any or all of the responders in making its determination as to which responders are most qualified.

Section 57‑3‑360. (A) The board must approve the request for proposals before it may be formally issued. At least ten days prior to submitting a request for proposals and any accompanying documents to the board for consideration, the department must hold a public meeting concerning the request for proposals and the proposed public‑private initiative.

(B) A notice of the public meeting must be forwarded to a newspaper of general circulation in all affected jurisdictions with a request that it be published at least once a week for two consecutive weeks. A notice of the meeting must also be furnished, on or before the date of the first newspaper publication, in writing to each member of the General Assembly representing a portion of an affected jurisdiction and to any person who has informed the department or the board that he desires to be notified of the public meeting. The notice must also be posted in a conspicuous location on the department’s internet website. The notice must contain a complete description of the project.

Section 57‑3‑370. (A) The request for proposal prepared by the department that is the subject of the public meeting required by Section 57‑3‑360 and submitted to the board for consideration, must be detailed enough and contain sufficient information for the board to determine whether the proposed public‑private initiative is in the public interest. In addition to any other legal requirements, the request for proposal must include:

(1) the expected, desired, or approved location or route of the transportation facility;

(2) the anticipated maximum term of the partnership agreement;

(3) the anticipated user fees, if any, when the facility opens for operation; and

(4) the text of any anticipated non‑compete clause to be used in the partnership agreement, if any.

(B) The request for proposals must require each responder to identify an independent financial consultant whose competence and qualifications to provide the required consulting services must be an additional evaluation factor in the award of the contract. If the department elects not to negotiate a contract with the consultant proposed by the successful responder, the department may use any process otherwise authorized by law to select and contract with a different consultant. The request for proposals may require each responder to pay the department a fixed stipend, not to exceed the maximum amount stated in the request for proposals, which is sufficient, when combined with all stipends received, to pay for the cost of the department contracting with the consultant. The partnership agreement may require the successful responder to either reimburse the unsuccessful responders the amount of their respective stipends or to reimburse the department for the cost of contracting with the consultant.

Section 57‑3‑380. (A) To approve a request for proposal, the board must determine that:

(1) the proposed public‑private initiative is in the public interest;

(2) the anticipated financial structure of the public‑private initiative is sound;

(3) the anticipated term of the public‑private initiative is reasonable under the circumstances; and

(4) any anticipated non‑compete clauses proposed to be included in a partnership agreement do not put the public at a disadvantage.

(B) A term longer than thirty years must be specifically approved by the board and the approval must be accompanied by a written justification for the approved length.

(C) The department must provide the board with any additional information that the board reasonably believes is necessary to make its determination.

(D) The board must transmit its determination to the department as soon as practicable. If the board makes a negative determination, the board may make recommendations to the department concerning changes to the request for proposal that would result in a favorable determination.

Section 57‑3‑390. After the department is notified of the board’s favorable determination, the department may formally issue the request for proposal.

Section 57‑3‑400. (A) The department may enter into a partnership agreement under the provisions of this article. The terms of the partnership agreement must:

(1) be in the public interest;

(2) provide that the private entity shall keep the transportation facility open for use by the members of the public after its initial opening upon payment of the applicable user fees, if any; provided, that the transportation facility may be temporarily closed because of emergencies or, with the consent of the department, to protect the safety of the public or for reasonable construction or maintenance procedures; and

(3) provide:

(a) for the planning, acquisition, financing, refinancing, development, design, construction, reconstruction, replacement, improvement, maintenance, management, repair, leasing, or operation of a transportation facility, or any part or function of the transportation facility;

(b) the term of the partnership agreement;

(c) the grant, if any, to the private entity of a right to operate the transportation facility and the payment, if any, to be paid to the department;

(d) whether user fees will be collected on the transportation facility and the basis by which the user fees shall be determined and modified, provided that:

(i) the department shall establish the initial user fee, if any, to be charged to the traveling public for the use of the transportation facility. The department may delegate to the private entity the power to periodically revise the user fee to take into account inflation and economic conditions. Revisions may not exceed a cap contained in the partnership agreement. The cap must be expressed as the increase or decrease in an objective index identified and agreed to by the parties in the partnership agreement; and

(ii) any user fees and user fee adjustments provided in a partnership agreement may be computed under a congestion pricing method for the sole purpose of managing traffic flow;

(e) compensation to the private entity, which may include, but is not limited to, a reasonable development fee, a reasonable maximum rate of return on investment, and reimbursement of development expenses in the event of termination for convenience by the department;

(f) for the distribution of payments, if any;

(g) the guaranteed cost and completion guarantees, if any, related to the development or operation, or both, of the transportation facility and payment of damages for failure to meet the completion guarantee;

(h) a description of the actions the department may take to ensure proper maintenance of the transportation facility;

(i) remedies for default or non‑performance under the partnership agreement and grounds for termination of the partnership agreement by the department or private entity;

(j) procedures for amendment of the partnership agreement;

(k) the accounting and auditing standards to be used to evaluate progress on the project;

(l) which party will assume responsibility for specific project elements and the timing of the assumption of responsibility;

(m) that a user fee may not be imposed upon either a school bus, as defined in Section 56‑5‑190, that is owned, operated, or leased by either a public school or the South Carolina Department of Education, or on an authorized emergency vehicle, as defined in Section 56‑5‑170; and

(n) any other terms and provisions that the department deems reasonable, necessary, or appropriate, including provisions for revenue sources other than user fees.

(B) The partnership agreement may provide for an alternative dispute resolution process.

(C) In the partnership agreement the department may agree to make grants or loans for the development or operation, or both, of the transportation facility from time to time from amounts received from the federal government or any agency or instrumentality of the federal government.

(D) Any partnership agreement that the department intends to execute may not contain terms, conditions, or other provisions that materially deviate from the terms, conditions, and other provisions contained in the request for proposal approved by the board. Any material deviation must be referred to the board for approval in the same manner as provided in this article prior to the department entering into the partnership agreement. An executed partnership agreement is void ab initio if it contains any material deviations.

(E) The department may not enter into a partnership agreement unless it has complied with the requirements of Title 11, Chapter 35 and until the contractual terms of the partnership agreement have been approved by the Department of Transportation Commission.

(F) All partnership agreements must be transmitted to the General Assembly, the board, and the Governor and posted in a conspicuous place on the department’s internet website.

Section 57‑3‑410. The department shall own fee simple title to the transportation facility. The transportation facility must be open for public use, enjoyment, safety, and welfare.

Section 57‑3‑420. (A) If the department terminates the partnership agreement for default, the department may, without limitation:

(1) elect to take over the transportation facility, including the succession of all right, title, and interest in the transportation facility;

(2) exercise any other available rights and remedies; and

(3) conduct a procurement pursuant to this article to enter into a new partnership agreement with a different private entity.

(B) Any party asserting force majeure as an excuse to performance shall have the burden of proving proximate cause, that reasonable steps were taken to minimize the delay and damages caused by events when known, and that the other party was timely notified of the likelihood or actual occurrence which is claimed as grounds for a force majeure defense.

Section 57‑3‑430. (A) The department may accept from the United States or any of its agencies funds that are available to the State for carrying out this article, whether the funds are made available by grant, loan, or other means.

(B) The State assents to any federal requirements, conditions, or terms of any federal funding accepted by the department under this section.

(C) The department may enter into agreements or other arrangements with the United States or any of its agencies that may be necessary for carrying out the purposes of this article.

(D) The department may accept from any source any grant, donation, gift, or other form of conveyance of land, money, other real or personal property, or other item of value made to the State or the department for carrying out the purpose of this article.

(E) The department may combine federal, state, local, and private funds to finance a transportation facility under this article.

Section 57‑3‑440. Any financing of the project may be in such amounts and upon such terms and conditions as may be determined by the department and a private entity in the partnership agreement. The department and the private entity may use any and all revenues that may be available to them and may, to the fullest extent permitted by applicable law, issue debt, equity, or other securities or obligations. This article does not create any additional bonding authority for the department.

Section 57‑3‑450. The department may exercise the power of eminent domain to acquire property, rights‑of‑way or other rights in property for transportation projects that are part of a public‑private initiative. Fee simple title to such property shall be held by and in the name of the department. Any transportation facility operated by a private entity pursuant to a partnership agreement under the terms of this article must be open for public use and enjoyment.

Section 57‑3‑460. (A) All state law enforcement officers and law enforcement officers of an affected jurisdiction shall have the same powers and jurisdiction within the limits of a transportation facility that is the subject of a public‑private initiative as they have in their respective areas of jurisdiction and shall have access to the transportation facility that is the subject of a public‑private initiative at any time for the purpose of exercising those powers and jurisdiction.

(B) The traffic and motor vehicle laws of the State or, if applicable, any affected jurisdiction shall be the same on a transportation facility that is the subject of a public‑private initiative as those laws applied to conduct on similar transportation facilities in the State or affected area.

(C) Punishment for violations of traffic and motor vehicle laws of the State or, if applicable, any affected area on a transportation facility that is the subject of a public‑private initiative shall be as prescribed by law for conduct occurring on similar transportation facilities in the State or local jurisdiction.

(D) Collection of user fees by the private entity may be made pursuant to Article 9, Chapter 3, Title 57.

Section 57‑3‑470. (A) Partnership agreements may contain provisions that require private entities to obtain appropriate errors and omissions insurance to cover architectural and engineering services.

(B) The department may require one or more of the following forms of security to assure timely, faithful, and uninterrupted provisions of operations and maintenance services procured separately or as one element of a partnership agreement:

(1) operations period surety bonds that secure the performance of the private entity’s operations and maintenance obligations;

(2) letters of credit in an amount appropriate to cover the cost of the department preventing transportation infrastructure service interruptions for a period of up to twelve months; or

(3) appropriate written guarantees from the private entity, or depending upon the circumstances, from a parent corporation, to secure the recovery of reprocurement costs to the department if the private entity defaults in performance.

(C) The department shall require appropriate performance guarantees and security and appropriate payment bonds for the protection of persons supplying labor and materials to projects subject to a partnership agreement.

Section 57‑3‑480. An operator under this article and any utility whose facility is to be crossed or relocated shall cooperate fully in planning and arranging the manner of the crossing or relocation of the utility facility.

Section 57‑3‑490. The Circuit Court of Richland County has exclusive jurisdiction over actions between the department and a private entity for breach of a partnership agreement, whether the action is for monetary damages or declaratory, injunctive, or other equitable relief. A partnership agreement may contain a dispute resolution process, including, but not limited to, an obligation to participate in mandatory, non‑binding alternative dispute resolution.

Section 57‑3‑500. Partnership agreements may not be assigned, transferred, or sold without the prior written consent of the Department of Transportation Commission. The commission may not consent to a transfer, assignment, or sale unless it is in the public interest.

Section 57‑3‑510. The department may employ or contract with consultants and other specialists as may be necessary to carry out the duties and functions of this article. Any consultants or specialists, including the independent financial consultant, retained by the department are deemed to be public employees for the purposes of the conflict of interest provisions contained Chapter 13, Title 8.

Section 57‑3‑520. The department may adopt rules and regulations to carry out the provisions of this article as it deems necessary and appropriate.”

SECTION 3. Chapter 3, Title 57 of the 1976 Code is amended by adding:

“Article 9

Toll Roads, Use of Tolls, and Collection of Revenue

Section 57‑3‑900. As used in this title, the following terms shall have the following meanings:

(1) ‘Department’ shall mean the South Carolina Department of Transportation.

(2) ‘Toll roads’ shall mean:

(a) a turnpike project or facility, as defined in Article 9, Chapter 5, Title 57, constructed by the department pursuant to the provisions of this article;

(b) a transportation facility constructed by the department under a partnership agreement on which a toll is charged pursuant to Section 57‑3‑200 as added by Part II, Section 128 of Act No. 497 of 1994; or

(c) a transportation facility constructed by a private entity pursuant to the provisions of Article 3, Chapter 3, Title 57 on which a user fee is charged.

(3) ‘Tolls’ shall mean the tolls, charges, or user fees imposed for the use of a toll road.

Section 57‑3‑910. No toll may be imposed on passage of any vehicle on federal interstate highways in this State which were in existence as of January 1, 1997, unless the imposition is otherwise affirmatively approved by the General Assembly in separate legislation enacted solely for that purpose.

Section 57‑3‑920. Notwithstanding another provision of law, the department may impose and collect a toll on the proposed Interstate 73 corridor upon completion of this highway project. This toll must not be imposed upon a state‑owned or district‑owned school bus, or authorized emergency vehicles as defined in Section 56‑5‑170.

Section 57‑3‑930. (A) For the purposes of this section, ‘costs associated with the toll road’ means the costs of acquisition, construction, improving, financing, refinancing, operating, maintaining, and the satisfaction of the obligations of any partnership agreement authorized pursuant to Article 3, Title 3, Chapter 57. Under no circumstances may a toll be collected for maintenance and operations on a road subject to a partnership agreement after the expiration of the partnership agreement.

(B) Tolls imposed and collected on a toll road must only be used to pay for the costs associated with that toll road. The tolls collected on a toll road must be:

(1) credited to the State Highway Fund to be used for payment of costs associated with the toll road;

(2) retained and applied by the entity or entities developing the toll road pursuant to a partnership agreement authorized pursuant to Section 57‑3‑200 as added by Part II, Section 128 of Act No. 497 of 1994 or a partnership agreement authorized pursuant to Article 3, Title 3, Chapter 57; or

(3) used to service bonded indebtedness for the toll road pursuant to Paragraph 9, Section 13, Article X of the South Carolina Constitution.

(C) Upon repayment of the costs associated with the toll road, the toll charges shall cease.

Section 57‑3‑940. Any person who uses any toll road and fails or refuses to pay the toll is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than thirty days, and in addition thereto the department shall have a lien upon the vehicle driven by such person for the amount of such toll and may take and retain possession thereof.

Section 57‑3‑950. (A) For the purposes of this section only:

(1) ‘Agent’ means a public or private entity operating a toll road pursuant to an agreement with the department.

(2) ‘Department’ shall mean the South Carolina Department of Transportation.

(3) ‘Electronic toll collection system’ means a system of collecting tolls or charges which is capable of charging an account holder the appropriate toll or charge by transmission of information from an electronic device, transponder, barcode, or other device on a motor vehicle to the toll lane, which information is used to charge the account the appropriate toll or charge.

(4) ‘Lessor’ means any person, corporation, firm, partnership, agency, association, or organization renting or leasing vehicles to a lessee under a rental agreement, lease, or otherwise wherein the said lessee has the exclusive use of the vehicle for any period of time.

(5) ‘Lessee’ means any person, corporation, firm, partnership, agency, association, or organization that rents, leases, or contracts for the use of one or more vehicles and has exclusive use of the vehicles for any period of time.

(6) ‘Owner’ means a person or an entity who, at the time of a toll violation and with respect to the vehicle involved in the violation, is the registrant or co‑registrant of the vehicle with the South Carolina Department of Motor Vehicles or another state, territory, district, province, nation, or jurisdiction.

(7) ‘Photo‑monitoring system’ means a vehicle sensor installed to work in conjunction with a toll collection facility which automatically produces one or more photographs, one or more microphotographs, a videotape, or other recorded images of a vehicle at the time it is used or operated in violation of toll collection regulations.

(8) ‘Toll violation’ means the passage of a vehicle through a toll collection point without payment of the required toll.

(9) ‘Vehicle’ means a device in, upon, or by which a person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks.

(B) Notwithstanding another provision of law, when a vehicle is driven through a toll road without payment of the required toll, the owner and operator of the vehicle are jointly and severally liable to the department to pay the required toll, administrative fees, and civil penalty as provided in this section. The department may enforce collection of the required toll as provided for in this section. In addition, the department or its agent shall have a lien upon the vehicle for the amount of the toll and may take and retain possession of the vehicle until the lien is satisfied.

(C) A certificate, sworn to or affirmed by the department or its agent, or a facsimile of it, that a toll violation has occurred, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by a photo‑monitoring system, is prima facie evidence of the violation and is admissible in any proceeding charging a toll violation pursuant to this section. A photograph, microphotograph, videotape, or other recorded image evidencing a violation must be available for inspection by the party charged and is admissible into evidence in a proceeding to adjudicate liability for a violation.

(D) The department or its agent may assess and collect administrative fees of:

(1) not more than ten dollars for the first toll violation within a period of one year; or

(2) not more than twenty‑five dollars for each subsequent toll violation within a period of one year.

(E) Upon failure to pay the required toll and administrative fees to the department or its agent within thirty days of the notice, the owner or operator may be cited for failure to pay a toll pursuant to this subsection and, upon an adjudication of liability, is subject to a civil penalty not to exceed fifty dollars for each violation as contained in subsection (F). Upon an adjudication of liability, a judgment must be entered against the owner or operator, and the court must mail a copy of the judgment to the owner or operator. Upon failure to satisfy the judgment within thirty days, the court shall notify the Department of Motor Vehicles and the agent, and the Department of Motor Vehicles shall suspend the registration of the vehicle that was operated when the toll was not paid or the vehicle to which that vehicle’s license plate has been transferred and deny the vehicle’s registration or re‑registration pursuant to Section 56‑3‑1335. The suspension shall remain in effect until the judgment is satisfied and evidence of its satisfaction has been presented to the Department of Motor Vehicles and the department’s agent. An owner or operator who has been convicted of a violation of Section 57‑3‑940 is not liable for the penalty imposed by this subsection.

(F) If a magistrate or municipal judge determines that the person or entity charged with liability under this section is liable, the magistrate or municipal judge shall collect the unpaid tolls and administrative fee and forward them to the department or its agent. The magistrate or municipal judge also may impose a civil penalty of up to fifty dollars for each violation, plus court costs. The civil penalty must be distributed in the same manner as other fines and penalties collected by the magistrate. Notwithstanding another provision of law:

(1) adjudication of liability pursuant to this section must be made by the magistrate’s court of the county in which the toll facility is located or the municipal court of the city in which the toll facility is located; and

(2) an imposition of liability pursuant to this section must be based upon a preponderance of evidence submitted and is not a conviction as an operator pursuant to Section 57‑3‑940.

(G) The department or its agent shall send:

(1) a ‘First Notice to Pay Toll’ to the owner or operator of a vehicle which, on one occasion in any twelve‑month period, is identified as having been involved in a toll violation. The first notice must require payment to the department of the required toll, plus an administrative fee as provided for in subsection (D), within thirty days of the mailing of the notice;

(2) a ‘Second Notice to Pay Toll’ to the owner or operator of a vehicle which is identified as having been involved in a second toll violation in a twelve‑month period, or who has failed to respond to a ‘First Notice to Pay Toll’ within the required time period. The second notice must require payment to the department of the required tolls, plus an administrative fee as provided for in subsection (D) for each violation within thirty days of the mailing of the notice;

(3) a ‘Failure to Pay Toll’ citation to the owner or operator of a vehicle which is identified as having been involved in a third toll violation in a twelve‑month period, or who has failed to respond to the second notice within the required time period. The citation requires payment to the department of the unpaid tolls, plus an administrative fee of not more than twenty‑five dollars for each violation, within thirty days, or the recipient’s appearance in magistrate’s court of the county in which the violation occurred or the municipal court of the city in which the violation has occurred to contest the citation. A ‘Failure to Pay Toll’ citation constitutes the summons and complaint for an action to recover the toll and all applicable fees allowed pursuant to this section;

(4) notwithstanding another provision of law, the notices and citation required by subsection (G) by first‑class mail to the owner or operator of the vehicle identified as being involved in the toll violation. If a vehicle is registered in two or more names, the notices or citation must be mailed to the first name listed on the registration records. Notwithstanding another provision of law, personal delivery of the notices and citation is not required. A manual or automatic record of the mailing of the notices or citation prepared in the ordinary course of business is prima facie evidence of the mailing of the notices or citation; and

(5) the notices and citation required by this subsection must contain the following information:

(a) the name and address of the person or entity alleged to be liable for a failure to pay a toll pursuant to this section;

(b) the registration number of the vehicle involved in the toll violation;

(c) the location where the toll violation took place;

(d) the date and time of the toll violation;

(e) the identification number of the photo‑monitoring system which recorded the violation or other document locator number;

(f) information advising of the manner and time in which liability may be contested;

(g) a warning advising that failure to contest liability in the manner and time provided in this section is an admission of liability; and

(h) information advising that failure to pay a toll may result in the suspension of vehicle registration and that a lien may be levied on the vehicle.

(H) If a vehicle owner receives a notice or citation pursuant to this section for a period during which the vehicle involved in the toll violation was:

(1) reported to a law enforcement division as having been stolen, a valid defense to an allegation of liability for a failure to pay a toll is that the vehicle had been reported to a law enforcement division as stolen before the time the violation occurred and had not been recovered by the time of the violation. If an owner receives a notice or citation pursuant to this section for a violation which occurred during a time period in which the vehicle was stolen, but which had not been reported to a law enforcement division as having been stolen, a valid defense to an allegation of liability for a toll violation pursuant to this section is that the vehicle was reported as stolen within two hours after the discovery of the theft by the owner. For purposes of asserting the defense provided by this subitem, a certified copy of the police report on the stolen vehicle, sent by first‑class mail to the department, its agent, or the magistrate’s court or the municipal court having jurisdiction of the citation within thirty days after receipt of the notices or citation, is sufficient; or

(2) leased to another person or entity, the lessor is not liable for the violation if the lessor sends to the department or to the court having jurisdiction over the citation a copy of the rental, lease, or another contract document covering the vehicle on the date of the violation, with the name and address of the lessee clearly legible, within thirty days after receiving the notices or citation. Failure to send the information within the thirty‑day period renders the lessor liable for the unpaid tolls and any administrative fees or penalties assessed pursuant to this section. If the lessor complies with the provisions of this subitem, the lessee of the vehicle on the date of the violation is subject to liability for the failure to pay the toll if the department or its agent mails a notice of liability to the lessee within thirty days after receipt of a copy of the rental, lease, or other contract document.

(I) If a person or entity receives a notice or citation pursuant to this section, it is a valid defense to liability that the person or entity that receives the notice was not the owner of the vehicle at the time of the toll violation.

(J) If an owner who pays the required tolls, fees, or penalties, or all of them pursuant to this section was not the operator of the vehicle at the time of the violation, the owner may maintain an action for indemnification against the operator.

(K) An owner of a vehicle is not liable for a penalty imposed pursuant to this section if the operator of the vehicle has been convicted of a violation of Section 57‑3‑940 for the same incident.

(L) Where electronic toll collection systems are utilized:

(1) a person who would like to make payment of tolls electronically must apply to the department or its agent to become an account holder. The department or its agent, in its discretion, may deny the application of a person. A person whose application is accepted must execute an account holder’s agreement. The terms of the account holder’s agreement must be established by the department;

(2) the department shall ensure that adequate and timely notice is given to all electronic toll collection system account holders to inform them when their accounts are delinquent. The owner of a vehicle who is an account holder under the electronic toll collection system is not liable for a failure to pay a toll pursuant to the provisions of this section unless the department or its agent has first sent a notice of delinquency to the account holder and the account holder was delinquent at the time of the violation;

(3) the department shall not sell, distribute, or make available the names and addresses of electronic toll collection system account holders, without the account holder’s consent, to any entity that uses the information for commercial purposes. However, this restriction does not preclude the exchange of this information between entities with jurisdiction over or operating a toll highway bridge or tunnel in any state or Canadian province;

(4) information or data collected by the department or its authorized agent for the purpose of establishing and monitoring electronic toll collection accounts is not subject to disclosure under the Freedom of Information Act;

(5) notwithstanding another provision of law, all information, data, photographs, microphotographs, videotape, or other recorded images prepared pursuant to this section must be for the exclusive use of the department or its authorized agent in the discharge of its duties under this section and must not be open to the public, subject to the disclosure under the Freedom of Information Act, nor used in a court in an action or a proceeding pending unless the action or proceeding relates to the imposition of or indemnification for liability pursuant to this section.

(M) Notwithstanding any other provision of law, school buses transporting school children for a school event and authorized emergency vehicles as defined in Section 57‑5‑170 shall be exempt from the payment of any tolls.”

SECTION 4. Chapter 35, Title 11 of the 1976 Code is amended by adding:

“Section 11‑35‑3075. (A) A procurement authorized pursuant to Article 3, Chapter 3, Title 57 is subject to this chapter except as otherwise provided in this section. The exclusions contained in subsection (B) and the expanded discussions and proposal revisions contained in subsection (C) only apply to procurements authorized pursuant to Article 3, Chapter 3, Title 57.

(B) A procurement authorized pursuant to Article 3, Chapter 3, Title 57 is exempt from the following sections, and the regulations implementing these sections: Section 11‑35‑1530(8) (Negotiations), Section 11‑35‑2030 (Multi‑term Contracts), Section 11‑35‑3021 (Subcontractor Substitution), Section 11‑35‑3025 (Approval of architectural, engineering, or construction changes which do not alter scope or intent or exceed approved budget), Section 11‑35‑3030 (Bond and Security), Section 11‑35‑3035 (Error and Omissions Insurance), Section 11‑35‑3037 (Other Forms of Security), Section 11‑35‑3060 (Fiscal Responsibility), Section 11‑35‑3070 (Approval of architectural, engineering, or construction changes which do not alter scope or intent or exceed approved budget), Section 11‑35‑4230 (Authority to Resolve Contract and Breach of Contract Controversies), and Section 11‑35‑4320 (Contract Controversies).

(C) A procurement authorized pursuant to Article 3, Chapter 3, Title 57 may utilize expanded discussions and proposal revisions as provided in this subsection.

(1) Expanded discussions are exchanges between a governmental body and an offeror that are undertaken with the intent of allowing the offeror to revise its proposal. These discussions may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give‑and‑take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract. Expanded discussions are tailored to each offeror’s proposal. If the governmental body elects to conduct expanded discussions, such discussions must be conducted with each offeror. The primary objective of expanded discussions is to maximize the governmental body’s ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. Expanded discussions may include changes to the request for proposals that do not exceed the general scope of the request for proposals or alter the scope of the initial competition. In conducting discussions, the procurement officer shall control all exchanges.

(2) At a minimum, the procurement officer must, subject to paragraph (3) of this section, indicate to, or discuss with, each offeror still being considered for award, deficiencies, significant weaknesses, and adverse past performance information. The procurement officer also is encouraged to discuss other aspects of the offeror’s proposal that could, in the opinion of the procurement officer, be altered or explained to enhance materially the proposal’s potential for award. However, the procurement officer is not required to discuss every area where the proposal could be improved. The scope and extent of discussions are a matter of procurement officer judgment.

(3) Government personnel involved in the acquisition shall not engage in conduct that:

(a) favors one offeror over another;

(b) reveals an offeror’s technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror’s intellectual property to another offeror;

(c) reveals an offeror’s price without that offeror’s permission. However, the procurement officer may inform an offeror that its price is considered by the governmental body to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible, at the governmental body’s discretion, to indicate to all offerors the cost or price that the governmental body’s price analysis, market research, and other reviews have identified as reasonable;

(d) reveals the names of individuals providing reference information about an offeror’s past performance; or

(e) knowingly furnishes source selection information, as defined by regulation.

(4) The procurement officer may request or allow proposal revisions to clarify and document understandings reached during negotiations. At the conclusion of expanded discussions, each offeror shall be given an opportunity to submit a final proposal revision, including any revisions necessary to address any changes made to the solicitation. The procurement officer is required to establish a common cut‑off date only for receipt of final proposal revisions. Requests for final proposal revisions shall advise offerors that the final proposal revisions shall be in writing and that the government intends to make award without obtaining further revisions.”

SECTION 5. Section 11‑35‑710(1) of the 1976 Code is amended to read:

“(1) except as provided in Section 11‑35‑3075, the construction, maintenance, and repair of bridges, highways, and roads; vehicle and road equipment maintenance and repair; and other emergency‑type parts or equipment utilized by the Department of Transportation or the Department of Public Safety;”

SECTION 6. Section 11‑35‑40(3) of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“(3) Compliance with Federal Requirements. Where a procurement involves the expenditure of federal assistance, grant, or contract funds, the governmental body ~~shall~~ also shall comply with ~~such~~ federal ~~law and~~ laws, including authorized regulations, as are mandatorily applicable and which are not presently reflected in ~~the~~ this code. Notwithstanding, where federal assistance, grant, or contract funds are used in a procurement by a governmental body as defined in Section 11‑35‑310(18), this code, including any requirements that are more restrictive than federal requirements ~~shall~~, must be followed, except to the extent such action would render the governmental body ineligible to receive federal funds whose receipt is conditioned on compliance with mandatorily applicable federal law. In those circumstances, the solicitation must identify and explain the impact of such federal laws on the procurement process, including any required deviation from this code.”

SECTION 7. Section 57‑5‑1625 of the 1976 Code is amended to read:

“Section 57‑5‑1625. (A) The department may award highway construction contracts using a design‑build procedure. A design‑build contract means an agreement that provides for both the design~~, right‑of‑way acquisition,~~ and construction of a project by a single entity. ~~The design‑build contract may also provide for the maintenance, operation, or financing of the project. The agreement may be in the form of a design‑build contract, a franchise agreement, or any other form of contract approved by the department.~~

(B) Selection criteria shall include the cost of the project and may include contractor qualifications, time of completion, innovation, design and construction quality, design innovation, or other technical or quality related criteria.”

SECTION 8. Section 57‑5‑1310 of the 1976 Code is amended to read:

“Section 57‑5‑1310. This article is intended to provide an additional and an alternative method for the provision of and financing of highways and appurtenant facilities to the end that such highways may be undertaken or improved in such manner as may best be calculated to expedite relief of hazardous and congested traffic conditions on the highways in the State and provide acceptable avenues for commerce and intercommunications by vehicular traffic among the several sections of the State. In effecting this enactment, the General Assembly intends that the indebtedness herein authorized fall within the category permitted by Paragraph 9 of Section 13 of Article X of the Constitution of South Carolina.”

SECTION 9. Section 57‑5‑1320(2) of the 1976 Code is amended to read:

“(2) ‘Turnpike facility’ means any express highway or limited access highway or portion of it, constructed under the provisions of this article by the department, whether or not financed with turnpike bonds, including any bridge, tunnel, overpass, underpass, interchange, additional lanes or capacity, entrance plaza, approach, toll house, service station and administration and storage and other buildings and facilities which the department considers necessary or desirable. A turnpike facility constitutes a portion or extension of any existing or proposed highway in the state highway system;”

SECTION 10. Section 57‑5‑1330(1) of the 1976 Code is amended to read:

“(1) The department may designate, establish, plan, improve, construct, maintain, operate, and regulate turnpike facilities as a part of the state highway system or any federal aid system whenever the department determines the traffic conditions, present or future, justify the facilities, except that the department may not designate as a turnpike facility any highway, road, bridge, or other transportation facility funded in whole ~~or in part~~ by a local option sales and use tax as provided in Chapter 37 of Title 4. The department may utilize funds available for the maintenance of the state highway system for the maintenance of any turnpike facility financed pursuant to this article.”

SECTION 11. Section 40‑11‑360(A)(4) of the 1976 Code is amended to read:

“(4) Contractors performing construction work for the South Carolina Department of Transportation pursuant to that department’s prequalification requirements, or a procurement authorized pursuant to Article 3, Chapter 3, Title 57 ~~with the exception of public/private partnerships performing work pursuant to Section 57‑3‑200~~;”

SECTION 12. Section 57‑5‑1660 of the 1976 Code is amended by adding:

“(e) The provisions of this section do not apply to a procurement authorized pursuant to Article 3, Chapter 3, Title 57.

(f) When the department utilizes the design‑build delivery method authorized by Section 57‑5‑1625 for a highway construction project, the amount of the performance and indemnity bond and payment bonds required by this section shall relate only to the portion of the contract concerning construction.”

SECTION 13. It is the intent of the General Assembly that public‑private initiatives entered into pursuant to this act will be in all respects an essential governmental function dedicated for the public use that inures to the benefit of the people of this State through increased commerce and prosperity and the improvement of health and living conditions.

SECTION 14. The following sections of the 1976 Code are repealed: 12‑28‑2920, 57‑3‑200, 57‑3‑615, 57‑3‑618, 57‑5‑1490, and 57‑5‑1495.

SECTION 15. If any section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 16. This act takes effect upon approval by the Governor. /

Amend title to conform.

LAWRENCE K. GROOMS for Committee.

**A** **BILL**

TO ENACT THE “TRANSPORTATION INFRASTRUCTURE FUNDING FLEXIBILITY ACT”, BY AMENDING CHAPTER 3, TITLE 57 OF THE 1976 CODE, RELATING TO THE STATE HIGHWAY SYSTEM, BY ADDING ARTICLE 3 TO PROVIDE THAT THE DEPARTMENT OF TRANSPORTATION MAY SOLICIT PROPOSALS FOR PUBLIC-PRIVATE INITIATIVES FROM PRIVATE ENTITIES, TO PROVIDE FOR THE PROPOSAL REQUEST AND SUBMISSION PROCESS, TO PROVIDE FOR THE PROCESS OF SELECTING A PRIVATE ENTITY TO PARTICIPATE IN A PUBLIC-PRIVATE INITIATIVE, TO PROVIDE FOR INTERIM AND COMPREHENSIVE AGREEMENTS TO CARRY OUT THE TERMS OF THE PUBLIC-PRIVATE INITIATIVE, TO PROVIDE REQUIREMENTS FOR INTERIM AND COMPREHENSIVE AGREEMENTS, TO PROVIDE FOR PERMISSIBLE FINANCING OF THE PUBLIC-PRIVATE INITIATIVE, TO PROVIDE THAT THE DEPARTMENT OF TRANSPORTATION MAY EXERCISE THE POWER OF EMINENT DOMAIN IN CONJUNCTION WITH A PUBLIC-PRIVATE INITIATIVE; TO AMEND CHAPTER 3, TITLE 57, BY ADDING ARTICLE 9, TO PROVIDE THAT TOLLS MAY NOT BE IMPOSED ON FEDERAL INTERSTATE HIGHWAYS UNLESS APPROVED BY THE GENERAL ASSEMBLY, TO PROVIDE THAT THE DEPARTMENT OF TRANSPORTATION MAY IMPOSE A TOLL ON INTERSTATE 73, TO PROVIDE THAT TOLLS IMPOSED AND COLLECTED ON A PROJECT MUST BE USED ONLY TO PAY COSTS ASSOCIATED WITH THE TOLL ROAD AND TO DEFINE THE TERM “TOLLS ASSOCIATED WITH THE TOLL ROAD”, TO PROVIDE THAT A PERSON WHO FAILS TO PAY A TOLL IS GUILTY OF A MISDEMEANOR AND TO PROVIDE PUNISHMENT FOR VIOLATIONS, TO PROVIDE FOR AN ELECTRONIC TOLLING SYSTEM; TO AMEND SECTION 15-5-1660, TO PROVIDE FOR PERFORMANCE AND PAYMENT BONDS FROM PRIVATE ENTITIES ENGAGED IN A PUBLIC-PRIVATE INITIATIVE; TO AMEND SECTION 57-3-200, TO PROVIDE THAT THE DEPARTMENT OF TRANSPORTATION MAY REFINANCE PUBLIC-PRIVATE INITIATIVES AND SPECIFY WHICH ACTIVITIES MAY BE INCLUDED IN A REFINANCE; TO AMEND SECTION 57-5-1310, TO PROVIDE THAT THE DEPARTMENT OF TRANSPORTATION MAY USE TURNPIKE BONDS TO FINANCE IMPROVEMENTS ON ROADS; TO AMEND SECTION 57-5-1320, TO PROVIDE THAT THE DEFINITION OF “TURNPIKE FACILITY” INCLUDES PORTIONS OF HIGHWAYS IN ADDITION TO ALL OF A HIGHWAY AND TO PROVIDE THAT THE DEFINITION INCLUDES ADDITIONAL LANES OR CAPACITY ADDED TO AN EXISTING TURNPIKE FACILITY; TO AMEND SECTION 57-5-1330, TO PROVIDE THE DEPARTMENT OF TRANSPORTATION WITH MORE FLEXIBILITY IN WHAT MAY BE DESIGNATED, PLANNED, IMPROVED, CONSTRUCTED, MAINTAINED, OPERATED, OR REGULATED AS A TURNPIKE FACILITY; AND TO REPEAL SECTIONS 12-28-2920, 57-3-615, 57-3-618, 57-5-1490, AND 57-5-1495.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be referred to and cited as the “Transportation Infrastructure Funding Flexibility Act.”

SECTION 2. Chapter 3, Title 57 of the 1976 Code is amended by adding:

“Article 3

Public‑Private Initiatives

Section 57‑3‑300. As used in this article:

(1) ‘Affected jurisdiction’ means any county, city, town, municipal corporation, or other political subdivision within the State in which all or part of a qualifying transportation facility is located or any other public entity directly affected by the qualifying transportation facility.

(2) ‘Board’ means the State Budget and Control Board.

(3) ‘Comprehensive agreement’ means the agreement between a private entity and the department that relates to the development, management, financing, maintenance, or operation of a qualifying transportation facility.

(4) ‘Concession’ means any lease, license, franchise, easement, or other binding agreement transferring rights for the use and control, in whole or in part, of a qualifying transportation facility by the department to a private entity for a definite term during which the private entity will provide transportation‑related services including, but not limited to, operations and maintenance, revenue collection, toll‑collection enforcement, design, construction, and other activities that enhance mobility, reduce congestion, or otherwise manage the facility in return for the right to receive all or a portion of the revenues of the qualifying transportation facility.

(5) ‘Concession payment’ means a payment from a private entity to the State in connection with the development or operation, or both, of a qualifying transportation facility pursuant to a concession.

(6) ‘Construction manager at‑risk’ means a business that has been awarded a separate contract with the department to provide both construction management services and construction using the construction management at‑risk project delivery method. A contract with a construction manager at‑risk may be executed before completion of design.

(7) ‘Construction management at‑risk’ means a project delivery method by which the department sequentially awards separate contracts, the first for architectural and engineering services to design a transportation facility and the second to a construction manager at‑risk for both construction of the transportation facility according to the design and construction management services.

(8) ‘Department’ means the South Carolina Department of Transportation.

(9) ‘Design‑bid‑build’ means a project delivery method by which the department sequentially awards separate contracts, the first for architectural and engineering services to design a transportation facility, and the second for the construction of the transportation facility.

(10) ‘Design‑build’ means a project delivery method in which the department enters into a single contract for design and construction of a transportation facility.

(11) ‘Design‑build‑finance‑operate‑maintain’ means a project delivery method by which the department enters into a single contract for design, construction, finance, maintenance, and operation of a transportation facility over a contractually defined time period.

(12) ‘Design‑build‑operate‑maintain’ means a project delivery method in which the department enters into a single contract for the design, construction, maintenance, and operation of a transportation facility over a contractually defined time period.

(13) ‘Design requirements’ means the written description of a proposed transportation facility, including:

(a) features, functions, characteristics, qualities, and other properties required by the State;

(b) the anticipated schedule, including start, duration, and completion; and

(c) estimated funds available to the specific procurement, for design, construction, operation, and maintenance.

The design requirements may include drawings and other documents illustrating the scale and relationship of features, functions, and other characteristics of the proposed transportation facility.

(14) ‘Develop’ or ‘development’ means to plan, design, develop, finance, acquire, install, construct, or expand.

(15) ‘Existing transportation facility’ means a transportation facility not subject to an public private partnership agreement and open and operating as of January 1, 2009.

(16) ‘Force Majeure Occurrence’ shall mean an occurrence beyond the control and without the fault or negligence of the party affected and which by exercise or reasonable diligence the party is unable to prevent or provide against. Force majeure occurrences include, but are not limited to acts of God such as fire, flood, earthquake, storm, hurricane or other natural disaster, war, invasion, acts of foreign combatants, terrorists acts, military or other usurped political power or confiscation, nationalization, government sanction or embargo, labor disputes of third parties to an interim or comprehensive agreement, or the prolonged failure of electricity or other vital utility service.

(17) ‘Interim agreement’ means an agreement, including a memorandum of understanding or binding preliminary agreement, between a private entity and the department that provides for completion of studies and any other activities necessary to advance the development or operation, or both, of a qualifying transportation facility.

(18) ‘Maintenance’ includes ordinary maintenance, repair, rehabilitation, capital maintenance, maintenance replacement, and any other categories of maintenance that may be designated by the department.

(19) ‘Objective index’ means a generally accepted official index sanctioned by the state or federal government intended to measure inflation or economic growth, including, but not limited to, the Consumer Price Index or indices tracking gross domestic product.

(20) ‘Operate’ or ‘operation’ means to finance, manage, administer, maintain, improve, equip, or modify a qualifying transportation facility.

(21) ‘Operations and maintenance’ means a project delivery method in which the department enters into a single contract for the routine operation, routine repair, and routine maintenance of a transportation facility.

(22) ‘Operator’ means a private entity that is financing, managing, administering, maintaining, improving, equipping, or modifying a qualifying transportation community pursuant to a comprehensive agreement.

(23) ‘Private entity’ means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, non‑profit entity, or other business entity.

(24) ‘Proposal development documents’ means drawings and other design related documents as appropriate for the projects considered that are sufficient to fix and describe the size and character of a proposed transportation facility as to environmental, roadway geometry and design, bridge details and design, right of way, access management, appurtenance requirements and details, operational features and maintenance and other elements that may be appropriate to the applicable project delivery method.

(25) ‘Public interest’ means a balancing of the following factors:

(a) whether the project under consideration contributes to the general welfare and convenience of the people of this State;

(b) whether the project delivery method under consideration is:

(i) the most advantageous to the State and the public as a whole;

(ii) likely to result in the most timely, economical, and successful completion of the project;

(iii) likely to result in the economical and efficient management, maintenance, and operation of the transportation facility;

(c) the long and short term consideration of the impact the delivery method under consideration will have on all users; and

(d) local circumstances and conditions in the affected jurisdiction.

(26) ‘Public‑private initiative’ means a contract or contracts, as the case may be, between the department and one or more private entities, the terms of which are stated in an interim agreement or comprehensive agreement, that provides for one or more of the following project delivery methods:

(a) construction management at‑risk;

(b) operations and maintenance;

(c) design‑build‑operate‑maintain; or

(d) design‑build‑finance‑operate‑maintain.

(27) ‘Qualifying transportation facility’ means one or more transportation facilities developed or operated, or both, by a private entity pursuant to this article.

(28) ‘Responder’ means a private entity that responds to a request for qualifications or a request for proposal, as appropriate.

(29) ‘Transportation facility’ means any existing or new highway, road, bridge, tunnel, toll road, overpass, ferry, mass transit facility, vehicle parking facility, rail facility, intermodal facility, or similar facility open to the public and used for the transportation of persons or goods, together with any buildings, structures, parking areas, appurtenances, or other property needed to operate such facility. A commercial or retail use or enterprise not essential to the transportation of persons or goods shall not be a ‘transportation facility.’

(30) ‘User fees’ means the rate, toll, fee, or other charges imposed by the department and collected by a private entity pursuant to a comprehensive agreement for use of all or part of a qualifying transportation facility.

Section 57‑3‑310. The department may enter into public‑private initiatives for transportation facilities only if upon thorough analysis the department determines in writing that for that particular transportation facility a public‑private initiative is in the public interest. The department must post its determination and supporting analysis in a conspicuous location on its internet website.

Section 57‑3‑320. This article does not apply to the design‑build or the design‑bid‑build project delivery methods.

Section 57‑3‑330. (A) Subject to the provisions of this article, the department may solicit, receive, consider, evaluate, and accept proposals for a public‑private initiative.

(B) The department may not consider, evaluate, or accept unsolicited proposals for a public‑private initiative.

(C) An existing transportation facility may not be the subject of a public‑private initiative. However, if new capacity or lanes are added to an existing transportation facility, then the additional capacity or new lanes may be the subject of a public‑private initiative.

Section 57‑3‑340. The department may solicit proposals for public‑private initiatives only pursuant to requests for qualifications and requests for proposal that have been approved by the board.

Section 57‑3‑350. (A) When the department determines that a public‑private initiative is in the public interest pursuant to Section 57‑3‑310, the department must first prepare a request for qualifications and submit the request for qualifications to the board for approval. The request for qualifications must contain at least the project title, the general scope of work, a description of all professional services required for that project, the evaluative criteria contained in subsection (D), the submission deadline, and the manner in which interested private entities may submit a response.

(1) The date set for submissions from interested private entities must be no less than fifteen days after the department formally issues the request for qualifications.

(2) The response must contain information sufficient for the department to make an accurate assessment of the responder’s qualifications.

(B) To approve a request for qualifications, the board must determine whether the request requires responders to submit information detailed enough and sufficient for the department to make an informed decision concerning the responder’s relative qualifications.

(C) The department may issue the request for qualifications upon approval by the board. Adequate notice of the request for qualifications must be given at a reasonable time before the date set for the submission of responses. The notice must include publication in ‘South Carolina Business Opportunities’ or a means of central electronic advertising as directed or approved by the board. The department may charge a private entity the cost incurred for copying and mailing documents or other materials requested in response to a request for qualifications.

(D) The department must evaluate each of the responders and identify at least the three most qualified for the project. The department shall consider the following factors when evaluating each of the responders:

(1) past performance on similar projects;

(2) demonstrated ability to meet time and budget requirements;

(3) location and knowledge of the locality of the project if the application of this criterion leave an appropriate number of qualified private entities, given the nature and size of the project

(4) recent, current, and projected workloads;

(5) creativity and insight related to the project;

(6) related work experience on similar projects; and

(7) any other reasonable criteria included in the request for qualifications.

(E) The department may interview any or all of the responders in making its determination as to which responders are most qualified.

(F) The department must notify all responders of its final determination concerning which responders are most qualified for the project and the responders protest rights.

(G) Subject to the requirements contained in this subsection, the department must develop a formal process by which responders determined not to be among the most qualified for the project may protest that determination to the Department of Transportation Commission. The commission must hear the protest at its next scheduled meeting and render its decision concerning the protest at a special meeting held no later than thirty days after the hearing. If the commission finds that the determination of the most qualified responders is in error as it relates to the protestor, the commission may cancel that determination or revise the determination to correct the error. The remedy granted by the commission is the exclusive remedy available to the protestor. The Circuit Court of Richland County shall have jurisdiction to hear appeals from the commission’s decision.

Section 57‑3‑360. (A) The department must prepare a request for proposal to be submitted to the most qualified responders. The board must approve the request for proposal before it may be formally issued. At least ten days prior to submitting a request for proposal and any accompanying documents to the board for consideration, the department must hold a public meeting concerning the request for proposal and the proposed public‑private initiative.

(B) A notice of the public meeting must be forwarded to a newspaper of general circulation in the affected jurisdiction with a request that it be published at least once a week for two consecutive weeks. A notice of the meeting must also be furnished, on or before the date of the first newspaper publication, in writing to each member of the General Assembly representing a portion of the affected jurisdiction and to any person who has informed the department or the board that he desires to be notified of the public meeting. The notice must also be posted in a conspicuous location on the department’s internet website. The notice must contain a complete description of the project and an explanation of the terms contained in the proposed request for proposal.

Section 57‑3‑370. The request for proposal prepared by the department that is the subject of the public meeting required by Section 57‑3‑360 and submitted to the board for consideration, must be detailed enough and contain sufficient information for the board to determine whether the proposed public‑private initiative is in the public interest. At a minimum, the request for proposal must include:

(1) the project title;

(2) the general scope of the project;

(3) the project’s design requirements;

(4) a solicitation for proposal development documents;

(5) the expected, desired, or approved location or route of the transportation facility;

(6) the anticipated maximum term of the comprehensive agreement;

(7) the anticipated toll charges, if any, when the facility opens for operation;

(8) the text of any non‑compete clause to be used in the comprehensive agreement, if any;

(9) factors the department deems appropriate to consider when evaluating a proposal;

(10) a description of the qualifications based selection procedure to be utilized for the evaluation of responder qualifications if the selection procedure for the project will be qualifications based; and

(11) the manner in which an interested private entity may respond to the request for proposal and the time frame in which the response must be submitted.

Section 57‑3‑380. (A) To approve a request for proposal, the board must determine that:

(1) the proposed public‑private initiative is in the public interest;

(2) the anticipated financial structure of the public‑private initiative is sound;

(3) the anticipated term of the public‑private initiative is reasonable under the circumstances; and

(4) any anticipated non‑compete clauses proposed to be included in a comprehensive agreement do not put the public at a disadvantage.

(B) A term longer than thirty years must be specifically approved by the board and the approval must be accompanied by a written justification for the approved length.

(C) The department must provide the board with any additional information that the board reasonably believes is necessary to make its determination.

(D) The board must transmit its determination to the department as soon as practicable. If the board makes a negative determination, the board may make recommendations to the department concerning changes to the request for proposal that would result in a favorable determination.

Section 57‑3‑390. (A) After the department is notified of the board’s favorable determination, the department may formally issue the request for proposal. Adequate notice of the request for proposal must be given at a reasonable time before the date set for the submission of responses. The notice must include publication in ‘South Carolina Business Opportunities’ or a means of central electronic advertising as directed or approved by the board. The department may charge a private entity the cost incurred for copying and mailing documents or other materials requested in response to a request for proposal.

(B) The department must consider the following factors in evaluating a response to a request for proposal and selecting a responder with which to enter into a public‑private initiative:

(1) benefits to the public;

(2) demonstrated compliance with design requirements;

(3) responder qualifications;

(4) the financial capacity of the responder and any parent or affiliated companies;

(5) the project schedule;

(6) price, or life‑cycle price for design‑build‑operate‑maintain and design‑build‑finance‑operate‑maintain procurements;

(7) the safety record of the private entity; and

(8) other factors contained in the request for proposal that the department deems appropriate.

(C) In soliciting and selecting a responder with which to enter into a public‑private initiative, the department must utilize one or more of the following procurement approaches:

(1) competitive sealed bids or proposals;

(2) a qualifications based selection procedure; or

(3) any other competitive selection process approved by the State Budget and Control Board.

(D) Subject to the requirements of this article, the department may select multiple responders with which to enter into an interim agreement or comprehensive agreement if it is in the public interest to do so.

(E) The department shall select a responder for a public‑private initiative on a competitive basis to the maximum extent practicable.

Section 57‑3‑400. (A) Prior to or in connection with the negotiation of a comprehensive agreement, the department may enter into an interim agreement with a selected responder proposing the development, financing, or operation, or any combination, of the qualified transportation facility. An interim agreement may permit the private entity to commence activities for which it may be compensated related to the proposed or qualifying transportation facility, including project planning and development, advance right‑of‑way acquisition, design and engineering, environmental analysis and mitigation, surveys, conducting transportation and revenue studies, and ascertaining the availability of financing for the qualifying transportation facility.

(B) Entering into an interim agreement is not a condition precedent to entering into a comprehensive agreement.

(C) The department may enter into an interim agreement with multiple responders if the department determines in writing that it is in the public interest to do so. The department’s determination must be posted in a conspicuous place on the department’s internet website.

(D) The department may not enter into an interim agreement until the interim agreement has been approved by the Department of Transportation Commission.

(E) All interim agreements must be transmitted to the General Assembly, the board, and the Governor and must be posted in a conspicuous place on the department’s internet website.

(F) A public‑private initiative may not be undertaken solely pursuant to an interim agreement.

Section 57‑3‑410. (A) The department may enter into a comprehensive agreement under the provisions of this article. The terms of the comprehensive agreement must:

(1) be in the public interest;

(2) provide that the private entity shall keep the qualifying transportation facility open for use by the members of the public after its initial opening upon payment of the applicable user fees, if any; provided, that the qualifying transportation facility may be temporarily closed because of emergencies or, with the consent of the department, to protect the safety of the public or for reasonable construction or maintenance procedures; and

(3) provide:

(a) the planning, acquisition, financing, refinancing, development, design, construction, reconstruction, replacement, improvement, maintenance, management, repair, leasing, or operation of a qualifying transportation facility, or any part or function of the qualifying transportation facility;

(b) the term of the comprehensive agreement;

(c) the grant, if any, to the private entity of a concession in the qualifying transportation facility and the concession payment, if any, to be paid to the department;

(d) whether user fees will be collected on the qualifying transportation facility and the basis by which the user fees shall be determined and modified, provided that:

(i) the department shall establish the initial user fee, if any, to be charged to the traveling public for the use of the qualifying transportation facility. The department may delegate to the private entity the power to periodically revise the user fee to take into account inflation and economic conditions. Revisions may not exceed a cap contained in the comprehensive agreement. The cap must be expressed as the increase or decrease in an objective index identified and agreed to by the parties in the comprehensive agreement; and

(ii) any user fees and user fee adjustments provided in a comprehensive agreement may be computed under a congestion pricing method for the sole purpose of managing traffic flow.

(e) compensation to the private entity, which may include a reasonable development fee, a reasonable maximum rate of return on investment, and reimbursement of development expenses in the event of termination for convenience by the department;

(f) for the distribution of concession payments;

(g) the guaranteed cost and completion guarantees related to the development or operation, or both, of the qualifying transportation facility and payment of damages for failure to meet the completion guarantee;

(h) a description of the actions the department may take to ensure proper maintenance of the qualifying transportation facility;

(i) remedies for default or non‑performance under the comprehensive agreement and grounds for termination of the comprehensive agreement by the department or private entity;

(j) procedures for amendment of the comprehensive agreement;

(k) the accounting and auditing standards to be used to evaluate progress on the project;

(l) which party will assume responsibility for specific project elements and the timing of the assumption of responsibility; and

(m) any other terms and provisions that the department deems reasonable, necessary or appropriate, including provisions for revenue sources other than user fees.

(B) In the comprehensive agreement the department may agree to make grants or loans for the development or operation, or both, of the qualifying transportation facility from time to time from amounts received from the federal government or any agency or instrumentality of the federal government.

(C) Any comprehensive agreement that the department intends to execute may not contain terms, conditions, or other provisions that materially deviate from the terms, conditions, and other provisions contained in the request for proposal approved by the board. Any material deviation must be referred to the board for approval in the same manner as provided in this article prior to the department entering into the comprehensive agreement. An executed comprehensive agreement is void ab initio if it contains any material deviations.

(D) The execution of a comprehensive agreement terminates interim agreements between the department and the other party to the comprehensive agreement.

(E) The department may not enter into a comprehensive agreement until the comprehensive agreement has been approved by the Department of Transportation Commission.

(F) All comprehensive agreements must be transmitted to the General Assembly, the board, and the Governor and posted in a conspicuous place on the department’s internet website.

(G) A responder with whom the department chose not to enter into a comprehensive agreement may appeal that decision to the Circuit Court of Richland County. When reviewing the contract award decision, the circuit court must apply an abuse of discretion standard.

Section 57‑3‑420. The department shall own fee simple title to the qualifying transportation facility. Notwithstanding any law to the contrary, however, pursuant to the terms of a comprehensive agreement the department may grant to a private entity a concession for the purpose of the development or operation, or both, of a qualified transportation facility. The department’s grant of a concession to a private entity for a qualifying transportation facility must be open for public use, enjoyment, safety, and welfare.

Section 57‑3‑430. (A) Upon the occurrence, and during the continuation of a material default by an operator, not related to an force majure occurrence, the department may:

(1) elect to take over the transportation facility, including the succession of all right, title, and interest in the transportation facility; and

(2) terminate the public‑private agreement and exercise any other available rights and remedies.

(B) In the event that the department elects to take over the a transportation facility pursuant to subsection (A), the department:

(1) must develop and operate the transportation facility;

(2) must comply with service contracts;

(3) may impose user fees for the use of the facility; and

(4) may solicit proposals for the maintenance and operation of the transportation facility pursuant to the provisions of this article.

(C) The department and a private entity may agree to waive the provisions of this section in a comprehensive agreement and negotiate different remedies for material default provided that the negotiated remedies protect the public’s interest in the qualified transportation facility.

(D) Any party asserting force majeure as an excuse to performance shall have the burden of proving proximate cause, that reasonable steps were taken to minimize the delay and damages caused by events when known, and that the other party was timely notified of the likelihood or actual occurrence which is claimed as grounds for a defense under this clause.

Section 57‑3‑440. (A) The department may accept from the United States or any of its agencies funds that are available to the State for carrying out this article, whether the funds are made available by grant, loan, or other means.

(B) The State assents to any federal requirements, conditions, or terms of any federal funding accepted by the department under this section.

(C) The department may enter into agreements or other arrangements with the United States or any of its agencies that may be necessary for carrying out the purposes of this article.

(D) The department may accept from any source any grant, donation, gift, or other form of conveyance of land, money, other real or personal property, or other item of value made to the State or the department for carrying out the purpose of this article.

(E) Any qualifying transportation facility may be financed in whole or in part by contribution of any funds or property made by any private entity.

(F) The department may combine federal, state, local, and private funds to finance a qualifying transportation facility under this article.

Section 57‑3‑450. Any financing of the project may be in such amounts and upon such terms and conditions as may be determined by the department and a private entity in the comprehensive agreement. The department and the private entity may use any and all revenues that may be available to them and may, to the fullest extent permitted by applicable law, issue debt, equity, or other securities or obligations. This article does not create any additional bonding authority for the department.

Section 57‑3‑460. The department may exercise the power of eminent domain to acquire property, rights of way or other rights in property for transportation projects that are part of a public‑private initiative. Fee simple title to such property shall be held by and in the name of the department. Any concession granted to a private entity pursuant to a comprehensive agreement under the terms of this article shall require the transportation facility to be open for public use and enjoyment.

Section 57‑3‑470. (A) All state law enforcement officers and law enforcement officers of an affected jurisdiction shall have the same powers and jurisdiction within the limits of the qualifying transportation facility as they have in their respective areas of jurisdiction and access to the qualifying transportation facility at any time for the purpose of exercising those powers and jurisdiction.

(B) The traffic and motor vehicle laws of the State or, if applicable, any affected jurisdiction shall be the same on the qualifying transportation facility as those laws applied to conduct on similar transportation facilities in the State or affected area.

(C) Punishment for violations of traffic and motor vehicle laws of the State or, if applicable, any affected area on the qualifying transportation facility shall be as prescribed by law for conduct occurring on similar transportation facilities in the State or local jurisdiction.

(D) Collection of user fees by the private entity may be made pursuant to Article 9, Chapter 3, Title 57.

Section 57‑3‑480. Participation in a report or study that is later used in the preparation of design requirements for a project does not disqualify a private entity from responding to a request for qualifications or request for proposal on a construction management at‑risk, design‑build‑operate‑maintain, or design‑build‑finance‑operate‑maintain procurement unless the participation provides the business with a substantial competitive advantage.

Section 57‑3‑490. (A) Interim agreements and comprehensive agreements may contain provisions that require private entities to obtain appropriate errors and omissions insurance to cover architectural and engineering services.

(B) The department may require one or more of the following forms of security to assure timely, faithful, and uninterrupted provisions of operations and maintenance services procured separately or as one element of another project delivery method:

(1) operations period surety bonds that secure the performance of the private entity’s operations and maintenance obligations;

(2) letters of credit in an amount appropriate to cover the cost of the department preventing transportation infrastructure service interruptions for a period of up to twelve months; or

(3) appropriate written guarantees from the private entity, or depending upon the circumstances, from a parent corporation, to secure the recovery of reprocurement costs to the department if the private entity defaults in performance.

Section 57‑3‑500. An operator under this article and any utility whose facility is to be crossed or relocated shall cooperate fully in planning and arranging the manner of the crossing or relocation of the utility facility.

Section 57‑3‑510. Nothing in this article shall be construed or deemed to limit any waiver of the sovereign immunity of the State or any officer or employee of the State with respect to the participation in or approval of all or any part of the qualifying transportation facility or its operation.

Section 57‑3‑520. Interim agreements, comprehensive agreements, other contracts permitted or required by this article, and other activities associated with the procurement methods permitted by this chapter are not subject to the provisions of Section 40‑11‑200 or Chapter 35, Title 11.

Section 57‑3‑530. Interim and comprehensive agreements may not be assigned, transferred, or sold without the prior written consent of the Department of Transportation Commission. The commission may not consent to a transfer, assignment, or sale unless it is in the public interest.

Section 57‑3‑540. The department may employ consultants and other specialists as may be necessary to carry out the duties and functions of this article. Any consultants or specialists hired by the department are subject to the conflict of interest provisions contained in the State Ethics Act.

Section 57‑3‑550. The department must adopt rules and regulations to carry out the provisions of this article as it deems necessary or appropriate.”

SECTION 3. Chapter 3, Title 57 of the 1976 Code is amended by adding:

“Article 9

Toll Roads, Use of Tolls, and Collection of Revenue

Section 57‑3‑900. As used in this title, the following terms shall have the following meanings:

(1) ‘Department’ shall mean the South Carolina Department of Transportation.

(2) ‘Toll roads’ shall mean:

(a) a turnpike project or facility, as defined in Article 9, Chapter 5, Title 57, constructed by the department pursuant to the provisions of this article;

(b) a transportation facility constructed by the department under a partnership agreement pursuant to Section 57‑3‑200 on which a toll is charged; or

(c) a qualifying transportation facility constructed by a private entity pursuant to the provisions of Article 3, Chapter 3, Title 57 on which a user fee is charged.

(3) ‘Tolls’ shall mean the tolls, charges, or user fees imposed for the use of a toll road.

Section 57‑3‑910. No toll may be imposed on passage of any vehicle on federal interstate highways in this State which were in existence as of January 1, 1997, unless the imposition is otherwise affirmatively approved by the General Assembly in separate legislation enacted solely for that purpose.

Section 57‑3‑920. Notwithstanding another provision of law, the department may impose and collect a toll on the proposed Interstate 73 corridor upon completion of this highway project. This toll must not be imposed upon a state‑owned or district‑owned school bus, or authorized emergency vehicles as defined in Section 56‑5‑170.

Section 57‑3‑930. (A) For the purposes of this section, ‘costs associated with the toll road’ means the costs of acquisition, construction, improving, financing, refinancing, operating, maintaining, or the satisfaction of the obligations of any partnership agreement authorized pursuant to Section 57‑3‑200 or comprehensive agreement under Article 3, Title 3, Chapter 57.

(B) Tolls imposed and collected on a toll road must only be used to pay for the costs associated with that toll road. The tolls collected on a toll road must be:

(1) credited to the State Highway Fund to be used for payment of costs associated with the toll road;

(2) retained and applied by the entity or entities developing the toll road pursuant to an partnership agreement authorized pursuant to Section 57‑3‑200 or a comprehensive agreement pursuant to Article 3, Title 3, Chapter 57; or

(3) used to service bonded indebtedness for the toll road pursuant to Paragraph 9, Section 13, Article X of the South Carolina Constitution.

(C) Upon repayment of the costs associated with the toll road, the toll charges shall cease.

Section 57‑3‑940. Any person who uses any turnpike project and fails or refuses to pay the toll is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than thirty days, and in addition thereto the department shall have a lien upon the vehicle driven by such person for the amount of such toll and may take and retain possession thereof.

Section 57‑3‑950. (A) For the purposes of this section only:

(1) ‘Department’ shall mean the South Carolina Department of Transportation or the public or private entity operating the toll road pursuant to a comprehensive agreement with the department.

(2) ‘Electronic toll collection system’ means a system of collecting tolls or charges which is capable of charging an account holder the appropriate toll or charge by transmission of information from an electronic device, transponder, barcode, or other device on a motor vehicle to the toll lane, which information is used to charge the account the appropriate toll or charge.

(3) ‘Lessor’ means any person, corporation, firm, partnership, agency, association, or organization renting or leasing vehicles to a lessee under a rental agreement, lease, or otherwise wherein the said lessee has the exclusive use of the vehicle for any period of time.

(4) ‘Lessee’ means any person, corporation, firm, partnership, agency, association, or organization that rents, leases, or contracts for the use of one or more vehicles and has exclusive use of the vehicles for any period of time.

(5) ‘Owner’ means a person or an entity who, at the time of a toll violation and with respect to the vehicle involved in the violation, is the registrant or co‑registrant of the vehicle with the South Carolina Department of Motor Vehicles or another state, territory, district, province, nation, or jurisdiction.

(6) ‘Photo‑monitoring system’ means a vehicle sensor installed to work in conjunction with a toll collection facility which automatically produces one or more photographs, one or more microphotographs, a videotape, or other recorded images of a vehicle at the time it is used or operated in violation of toll collection regulations.

(7) ‘Toll violation’ means the passage of a vehicle through a toll collection point without payment of the required toll.

(8) ‘Vehicle’ means a device in, upon, or by which a person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks.

(B) Notwithstanding another provision of law, when a vehicle is driven through a toll road without payment of the required toll, the owner and operator of the vehicle are jointly and severally liable to the department to pay the required toll, administrative fees, and civil penalty as provided in this section. The department may enforce collection of the required toll as provided for in this section. In addition, the department shall have a lien upon the vehicle for the amount of the toll and may take and retain possession of the vehicle until the lien is satisfied.

(C) A certificate, sworn to or affirmed by an agent of the department, or a facsimile of it, that a toll violation has occurred, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by a photo‑monitoring system, is prima facie evidence of the violation and is admissible in any proceeding charging a toll violation pursuant to this section. A photograph, microphotograph, videotape, or other recorded image evidencing a violation must be available for inspection by the party charged and is admissible into evidence in a proceeding to adjudicate liability for a violation.

(D) The department or its authorized agent may assess and collect administrative fees of:

(1) not more than ten dollars for the first toll violation within a period of one year; or

(2) not more than twenty‑five dollars for each subsequent toll violation within a period of one year.

(E) Upon failure to pay the required toll and administrative fees to the department within thirty days of the notice, the owner or operator may be cited for failure to pay a toll pursuant to this subsection and, upon an adjudication of liability, is subject to a civil penalty not to exceed fifty dollars for each violation as contained in subsection (F). Upon an adjudication of liability, a judgment must be entered against the owner or operator, and the court must mail a copy of the judgment to the owner or operator. Upon failure to satisfy the judgment within thirty days, the court shall notify the Department of Motor Vehicles and the authorized agent, and the Department of Motor Vehicles shall suspend the registration of the vehicle that was operated when the toll was not paid and deny the vehicle’s registration or reregistration pursuant to Section 56‑3‑1335. The suspension shall remain in effect until the judgment is satisfied and evidence of its satisfaction has been presented to the Department of Motor Vehicles and the authorized agent. An owner or operator who has been convicted of a violation of Section 57‑3‑940 is not liable for the penalty imposed by this subsection.

(F) If a magistrate or municipal judge determines that the person or entity charged with liability under this section is liable, the magistrate or municipal judge shall collect the unpaid tolls and administrative fee and forward them to the department or its authorized agent. The magistrate or municipal judge also may impose a civil penalty of up to fifty dollars for each violation, plus court costs. The civil penalty must be distributed in the same manner as other fines and penalties collected by the magistrate. Notwithstanding another provision of law:

(1) adjudication of liability pursuant to this section must be made by the magistrate’s court of the county in which the toll facility is located or the municipal court of the city in which the toll facility is located; and

(2) an imposition of liability pursuant to this section must be based upon a preponderance of evidence submitted and is not a conviction as an operator pursuant to Section 57‑3‑940.

(G) The department or its authorized agent shall send:

(1) a ‘First Notice to Pay Toll’ to the owner or operator of a vehicle which, on one occasion in any twelve‑month period, is identified as having been involved in a toll violation. The first notice must require payment to the department of the required toll, plus an administrative fee as provided for in subsection (D), within thirty days of the mailing of the notice;

(2) a ‘Second Notice to Pay Toll’ to the owner or operator of a vehicle which is identified as having been involved in a second toll violation in a twelve‑month period, or who has failed to respond to a ‘First Notice to Pay Toll’ within the required time period. The second notice must require payment to the department of the required tolls, plus an administrative fee as provided for in subsection (D) for each violation within thirty days of the mailing of the notice;

(3) a ‘Failure to Pay a Toll’ citation to the owner or operator of a vehicle which is identified as having been involved in a third toll violation in a twelve‑month period, or who has failed to respond to the second notice within the required time period. The citation requires payment to the department of the unpaid tolls, plus an administrative fee of not more than twenty‑five dollars for each violation, within thirty days, or the recipient’s appearance in magistrate’s court of the county in which the violation occurred or the municipal court of the city in which the violation has occurred to contest the citation. A ‘Failure to Pay a Toll’ citation constitutes the summons and complaint for an action to recover the toll and all applicable fees allowed pursuant to this section; and

(4) notwithstanding another provision of law, the notices and citation required by subsection (G) by first‑class mail to the owner or operator of the vehicle identified as being involved in the toll violation. If a vehicle is registered in two or more names, the notices or citation must be mailed to the first name listed on the registration records. Notwithstanding another provision of law, personal delivery of the notices and citation is not required. A manual or automatic record of the mailing of the notices or citation prepared in the ordinary course of business is prima facie evidence of the mailing of the notices or citation;

(5) the notices and citation required by this subsection must contain the following information:

(a) the name and address of the person or entity alleged to be liable for a failure to pay a toll pursuant to this section;

(b) the registration number of the vehicle involved in the toll violation;

(c) the location where the toll violation took place;

(d) the date and time of the toll violation;

(e) the identification number of the photo‑monitoring system which recorded the violation or other document locator number;

(f) information advising of the manner and time in which liability may be contested;

(g) a warning advising that failure to contest liability in the manner and time provided in this section is an admission of liability; and

(h) information advising that failure to pay a toll may result in the suspension of vehicle registration and that a lien may be levied on the vehicle.

(H) If a vehicle owner receives a notice or citation pursuant to this section for a period during which the vehicle involved in the toll violation was:

(1) reported to a law enforcement division as having been stolen, a valid defense to an allegation of liability for a failure to pay a toll is that the vehicle had been reported to a law enforcement division as stolen before the time the violation occurred and had not been recovered by the time of the violation. If an owner receives a notice or citation pursuant to this section for a violation which occurred during a time period in which the vehicle was stolen, but which had not been reported to a law enforcement division as having been stolen, a valid defense to an allegation of liability for a toll violation pursuant to this section is that the vehicle was reported as stolen within two hours after the discovery of the theft by the owner. For purposes of asserting the defense provided by this subitem, a certified copy of the police report on the stolen vehicle, sent by first‑class mail to the department, its agent, or the magistrate’s court or the municipal court having jurisdiction of the citation within thirty days after receipt of the notices or citation, is sufficient; or

(2) leased to another person or entity, the lessor is not liable for the violation if the lessor sends to the department or to the court having jurisdiction over the citation a copy of the rental, lease, or another contract document covering the vehicle on the date of the violation, with the name and address of the lessee clearly legible, within thirty days after receiving the notices or citation. Failure to send the information within the thirty‑day period renders the lessor liable for the unpaid tolls and any administrative fees or penalties assessed pursuant to this section. If the lessor complies with the provisions of this subitem, the lessee of the vehicle on the date of the violation is subject to liability for the failure to pay the toll if the department or its agent mails a notice of liability to the lessee within thirty days after receipt of a copy of the rental, lease, or other contract document.

(I) If a person or entity receives a notice or citation pursuant to this section, it is a valid defense to liability that the person or entity that receives the notice was not the owner of the vehicle at the time of the toll violation.

(J) If an owner who pays the required tolls, fees, or penalties, or all of them pursuant to this section was not the operator of the vehicle at the time of the violation, the owner may maintain an action for indemnification against the operator.

(K) An owner of a vehicle is not liable for a penalty imposed pursuant to this section if the operator of the vehicle has been convicted of a violation of Section 57‑3‑940 for the same incident.

(L) Where electronic toll collection systems are utilized:

(1) a person who would like to make payment of tolls electronically must apply to the department or its authorized agent to become an account holder. The department or its authorized agent, in its discretion, may deny the application of a person. A person whose application is accepted must execute an account holder’s agreement. The terms of the account holder’s agreement must be established by the department;

(2) the department shall ensure that adequate and timely notice is given to all electronic toll collection system account holders to inform them when their accounts are delinquent. The owner of a vehicle who is an account holder under the electronic toll collection system is not liable for a failure to pay a toll pursuant to the provisions of this section unless the department or its authorized agent has first sent a notice of delinquency to the account holder and the account holder was delinquent at the time of the violation;

(3) the department shall not sell, distribute, or make available the names and addresses of electronic toll collection system account holders, without the account holder’s consent, to any entity that uses the information for commercial purposes. However, this restriction does not preclude the exchange of this information between entities with jurisdiction over or operating a toll highway bridge or tunnel in any state or Canadian province;

(4) information or data collected by the department or its authorized agent for the purpose of establishing and monitoring electronic toll collection accounts is not subject to disclosure under the Freedom of Information Act;

(5) notwithstanding another provision of law, all information, data, photographs, microphotographs, videotape, or other recorded images prepared pursuant to this section must be for the exclusive use of the department or its authorized agent in the discharge of its duties under this section and must not be open to the public, subject to the disclosure under the Freedom of Information Act, nor used in a court in an action or a proceeding pending unless the action or proceeding relates to the imposition of or indemnification for liability pursuant to this section.

(M) Notwithstanding any other provision of law, school buses transporting school children for a school event and authorized emergency vehicles as defined in Section 57‑5‑170 shall be exempt from the payment of any tolls.”

SECTION 4. Section 57‑5‑1660 of the 1976 Code is amended to read:

“Section 57‑5‑1660. ~~(a)~~(A) ~~The Department of Transportation shall require that the contractor on every public highway construction contract, exceeding ten thousand dollars, furnish the Department of Transportation, county, or road district the following bonds, which shall become binding upon the award of the contract to such contractor:~~ When the Department of Transportation awards a construction, design‑build, design‑build‑operate‑maintain, or design‑build‑finance‑operate‑ maintain contract in excess of ten thousand dollars, the following bonds shall be delivered to the department and shall become binding on the parties upon execution of the contract:

(1) ~~A performance and indemnity bond with a surety or sureties satisfactory to the authority awarding the contract, and in the full amount of the contract, and in no case less than ten thousand dollars, for the protection of the Department of Transportation, county, or road district.~~ a performance bond satisfactory to the department, executed by a surety company authorized to do business in South Carolina or otherwise secured in a manner satisfactory to the department, in an amount equal to one hundred percent of the portion of the contract price that does not include the cost of warranties, operation, maintenance, and finance; and

(2) ~~A payment bond with a surety or sureties satisfactory to the awarding authority, and in the amount of not less than fifty per cent of the contract, for the protection of all persons supplying labor and materials in the prosecution of work provided for in the contract for the use of each such person.~~ a payment bond satisfactory to the department, executed by a surety company authorized to do business in South Carolina or otherwise secured in a manner satisfactory to the department, for the protection of all persons supplying labor and material for use on the project in the performance of the construction work provided for in the contract, in an amount equal to one hundred percent of the portion of the contract price that does not include the cost of warranties, operation, maintenance, and finance.

~~(b)~~(B) Every person who has furnished labor, material, or rental equipment in the prosecution of the work provided for in such contract, in respect of which such a bond has been furnished under this section and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or material or rental equipment was furnished or supplied by him for which such claim is made, shall have the right to sue on such bond for the amount, or the balance thereof, unpaid at the time of the institution of such suit and to prosecute such action to final execution and judgment for the sum or sums justly due him. A remote claimant shall have a right of action upon the bond only upon giving written notice by certified or registered mail to the contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material or rental equipment for which claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom material or rental equipment was furnished or supplied or for whom labor was done or performed. However, in no event shall the aggregate amount of any claim against such payment bond by a remote claimant exceed the amount due by the bonded contractor to the person to whom the remote claimant has supplied labor, materials, rental equipment, or services, unless the remote claimant has provided notice of furnishing labor, materials, or rental equipment to the bonded contractor. Such written notice to the bonded contractor shall be personally served or sent by fax or sent by electronic mail or sent by registered or certified mail, postage prepaid, to the bonded contractor at any place the bonded contractor maintains a permanent office for the conduct of his business, or at the current address as shown on the records of the Department of Labor, Licensing and Regulation. After receiving the notice of furnishing labor, materials, or rental equipment, no payment by the bonded contractor shall lessen the amount recoverable by the remote claimant. However, in no event shall the aggregate amount of claims on the payment bond exceed the penal sum of the bond.

For purposes of this section, ‘bonded contractor’ means the contractor or subcontractor furnishing the payment bond, and ‘remote claimant’ means a person having a direct contractual relationship with a subcontractor, but no contractual relationship expressed or implied with the bonded contractor. No suit under this section shall be commenced after the expiration of one year after the date of the final settlement of the contract.

~~(c)~~(C) Nothing in this section shall be construed to limit the authority of ~~any contracting authority~~ the department to require a performance bond or other security acceptable to the department in addition to those specified in this section.

~~(d)~~(D) If the ~~Department of Transportation~~ department enters into a public highway construction contract exceeding ten thousand dollars and requires that the contractor furnish a performance ~~and indemnity bond,~~ or a payment bond, or both of them, the department~~, the county, or the road district~~ may not exact that the surety bond be furnished by a particular surety company or through a particular agent or broker.”

SECTION 5. Section 57‑3‑200 of the 1976 Code is amended to read:

“Section 57‑3‑200. From the funds appropriated to the Department of Transportation and from any other sources which may be available to the ~~Department~~ department, the ~~Department of Transportation~~ department may expend such funds as it deems necessary to enter into partnership agreements or comprehensive agreements with political subdivisions including authorized transportation authorities, and private entities to finance and refinance, by tolls and other financing methods, the cost of acquiring, constructing, reconstructing, improving, financing, refinancing, to include if necessary extending the term of a partnership agreement or a comprehensive agreement; equipping, maintaining and operating highways, roads, streets and bridges in this State. The department may alter, extend, modify, transfer or assign any partnership agreements or comprehensive agreements if it is in the public interest to do so and only with prior approval of the Department of Transportation Commission. The provisions of this Section must not be construed to confer upon the ~~Department of Transportation~~ department or political subdivisions any power to finance by tolls or other means the acquisition, construction, equipping, maintenance or operation which the ~~Department of Transportation~~ department or political subdivisions does not possess under other provisions of this Code.”

SECTION 6. Section 57‑5‑1310 of the 1976 Code is amended to read:

“Section 57‑5‑1310. This article is intended to provide an additional and an alternative method for the provision of and financing of highways and appurtenant facilities to the end that such highways may be undertaken or improved in such manner as may best be calculated to expedite relief of hazardous and congested traffic conditions on the highways in the State and provide acceptable avenues for commerce and intercommunications by vehicular traffic among the several sections of the State. In effecting this enactment, the General Assembly intends that the indebtedness herein authorized fall within the category permitted by paragraph 9 of Section 13 of Article X of the Constitution of South Carolina.”

SECTION 7. Section 57‑5‑1320(2) of the 1976 Code is amended to read:

“(2) ‘Turnpike facility’ means any express highway or limited access highway or portion of it, constructed under the provisions of this article by the department, whether or not financed with turnpike bonds, including any bridge, tunnel, overpass, underpass, interchange, additional lanes or capacity, entrance plaza, approach, toll house, service station and administration and storage and other buildings and facilities which the department considers necessary or desirable. A turnpike facility constitutes a portion or extension of any existing or proposed highway in the state highway system;”

SECTION 8. Section 57‑5‑1330(1) of the 1976 Code is amended to read:

“(1) The department may designate, establish, plan, improve, construct, maintain, operate, and regulate turnpike facilities as a part of the state highway system or any federal aid system whenever the department determines the traffic conditions, present or future, justify the facilities~~, except that the department may not designate as a turnpike facility any highway, road, bridge, or other transportation facility funded in whole or in part by a local option sales and use tax as provided in Chapter 37 of Title 4~~. The department may utilize funds available for the maintenance of the state highway system for the maintenance of any turnpike facility financed pursuant to this article.”

SECTION 9. It is the intent of the General Assembly that public‑private initiatives entered into pursuant to this act will be in all respects an essential governmental function dedicated for the public use that inures to the benefit of the people of this State through increased commerce and prosperity and the improvement of health and living conditions.

SECTION 10. The following sections of the 1976 Code are repealed: 12‑28‑2920, 57‑3‑615, 57‑3‑618, 57‑5‑1490, and 57‑5‑1495.

SECTION 11. If any section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 12. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑