VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend the Code of Virginia by adding a title numbered 33.2, containing a subtitle numbered I, consisting of chapters numbered 1 and 2, containing sections numbered 33.2-100 through 33.2-285, a subtitle numbered II, consisting of chapters numbered 3 through 14, containing sections numbered 33.2-300 through 33.2-1400, a subtitle numbered III, consisting of chapters numbered 15 through 18, containing sections numbered 33.2-1500 through 33.2-1824, and a subtitle numbered IV, consisting of chapters numbered 19 through 32, containing sections numbered 33.2-1900 through 33.2-3202 and to repeal Chapters 45 (§§ 15.2-4500 through 15.2-4534), 48.2 (§§ 15.2-4829 through 15.2-4840), 70 (§§ 15.2-7000 through 15.2-7021), and 71 (§§ 15.2-7022 through 15.2-7035) of Title 15.2, Title 33.1 (§§ 33.1-1 through 33.1-465), Chapters 18 (§§ 56-529 and 56-530) and 22 (§§ 56-556 through 56-575) of Title 56, and §§ 58.1-815 and 58.1-815.1 of the Code of Virginia and Chapter 693 of the Acts of Assembly of 1954, Chapters 462 and 714 of the Acts of Assembly of 1956, Chapter 24 of the Acts of Assembly of 1959, Extra Session, Chapters 228 and 605 of the Acts of Assembly of 1962, Chapter 348 of the Acts of Assembly of 1964, Chapter 203 of the Acts of Assembly of 1990, Chapter 548 of the Acts of Assembly of 1998, Chapters 238 and 705 of the Acts of Assembly of 2000, and Chapters 270 and 297 of the Acts of Assembly of 2005, relating to revising and recodifying laws pertaining to highways, bridges, ferries, rail and public transportation, transportation funding, and local and regional transportation.

[H 311]

Approved

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a title numbered 33.2, containing a subtitle numbered I, consisting of chapters numbered 1 and 2, containing sections numbered 33.2-100 through 33.2-285, a subtitle numbered II, consisting of chapters numbered 3 through 14, containing sections numbered 33.2-300 through 33.2-1400, a subtitle numbered III, consisting of chapters numbered 15 through 18, containing sections numbered 33.2-1500 through 33.2-1824, and a subtitle numbered IV, consisting of chapters numbered 19 through 32, containing sections numbered 33.2-1900 through 33.2-3202, as follows:

TITLE 33.2.

HIGHWAYS AND OTHER SURFACE TRANSPORTATION SYSTEMS.

SUBTITLE I.

GENERAL PROVISIONS AND TRANSPORTATION ENTITIES.

CHAPTER 1.

DEFINITIONS AND GENERAL PROVISIONS.

§ 33.2-100. Definitions.

As used in this title, unless the context requires a different meaning:

"Asset management" means a systematic process of operating and maintaining the systems of state highways by combining engineering practices and analysis with sound business practices and economic theory to achieve cost-effective outcomes.

"Board" means the Commonwealth Transportation Board.

"City" has the meaning assigned to it in § 1-208.

"Commissioner" or "Commissioner of Highways" means the individual who serves as the chief executive officer of the Department of Transportation.

"Department" means the Department of Transportation.

"Federal-aid systems" are the Interstate System and the National Highway System as set forth in 23 U.S.C. § 103.

"Highway" means the entire width between the boundary lines of every way or place open to the use of the public for purposes of vehicular travel in the Commonwealth.

"Highway purpose," "highway project," or "highway construction" means highway, passenger and freight rail, or public transportation purposes.

"Interstate System" means the same as that term is defined in 23 U.S.C. § 103(c). The "Interstate System" also includes highways or highway segments in the Commonwealth that constitute a part of the Dwight *D. Eisenhower National System of Interstate and Defense Highways as authorized and designated in accordance with § 7 of the Federal-Aid* Highway *Act of 1944 and § 108(a) of the Federal-Aid Highway Act of 1956 and are declared by resolution of the Commonwealth Transportation Board to be portions of the Interstate System.*

"Locality" has the meaning assigned to it in § 1-221.

"Maintenance" means (i) ordinary maintenance; (ii) maintenance replacement; (iii) operations that include traffic signal synchronization, incident management, and other intelligent transportation system functions; and (iv) any other categories of maintenance that may be designated by the Commissioner of Highways.

"Municipality" has the meaning assigned to it in § 1-224.

"National Highway System" means the same as that term is defined in 23 U.S.C. § 103(b).

"Primary highway" means any highway in or component of the primary state highway system.

"Primary state highway system" consists of all highways and bridges under the jurisdiction and control of the Commonwealth Transportation Board and the Commissioner of Highways and not in the secondary state highway system.

"Public transportation" or "mass transit" means passenger transportation by rubber-tired, rail, or other surface conveyance that provides shared ride services open to the general public on a regular and continuing basis. "Public transportation" or "mass transit" does not include school buses, charter or sight-seeing services, vehicular ferry service that serves as a link in the highway network, or human *service agency or other client-restricted transportation.*

"Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel. A highway may include two or more roadways if divided by a physical barrier or barriers or unpaved areas.

"Secondary highway" means any highway in or component of the secondary state highway system.

"Secondary state highway system" consists of all public highways, causeways, bridges, landings, and wharves in the counties of the Commonwealth not included in the primary state highway system and that have been accepted by the Department of Transportation for supervision and maintenance.

"Secretary" means the Secretary of Transportation.

"Systems of state highways" has the meaning assigned to it in § 1-251.

"Urban highway system" consists of those public highways, or portions thereof, not included in the systems of state highways, to which the Commonwealth Transportation Board directs payments pursuant to § 33.2-319.

§ 33.2-101. Governor to waive certain state statutory mandates and regulations to expedite certain highway construction projects.

Notwithstanding any contrary provision of this Code, whenever the Governor finds in his emergency preparedness planning that certain transportation improvements are necessary to avert or respond to a natural disaster, prevent or respond to an act of terrorism, or contribute to military operations during a time of war or state of emergency as defined in § 44-146.16, the Governor may, to the maximum extent not inconsistent with federal law, waive statutory mandates and regulations of any state agency, institution, instrumentality, or political subdivision concerning the issuance of permits or related approvals in order to expedite the construction, reconstruction, alteration, or relocation of such highways, bridges, tunnels, and associated facilities or structures as he deems necessary.

§ 33.2-102. Authority of cities and towns and certain counties in connection with federal aid.

The cities and towns of the Commonwealth and also the counties that have withdrawn from the provisions of Chapter 415 of the Acts of Assembly of 1932, as amended, may comply fully with the provisions of the present or future federal-aid road acts, and to this end they may enter into all contracts or agreements with the United States government or the appropriate agencies thereof relating to the survey, construction, improvement, and maintenance of roads, streets, and highways under their control and may do all other things necessary to carry out fully the cooperation contemplated and provided for by the present or future acts of Congress relating to the construction, improvement, and maintenance of roads, streets, and highways.

Such localities may also cooperate with the Board in connection with any project for the survey, construction, improvement, or maintenance of any road, street, or highway under their jurisdiction and control that is eligible for federal aid under any present or future federal-aid road acts and may by appropriate agreement or contract authorize the Board to act on their behalf in any dealings necessary with the United States or any agency thereof and may authorize the Board to carry out such survey, construction, improvement, or maintenance work on such projects either with or without participation by the locality. Whenever the Board is given such authority by any such locality, it may do all things contemplated and provided for by present or future federal-aid road acts and the agreements made with such locality.

§ 33.2-103. Certified mail; subsequent mail or notices may be sent by regular mail.

Whenever in this title the Board, Commissioner of Highways, or Department is required to send any mail or notice by certified mail and such mail or notice is sent certified mail, return receipt requested, then any subsequent, identical mail or notice that is sent by the Board, Commissioner of Highways, or Department may be sent by regular mail.

§ 33.2-104. English units of measure.

A. Neither the Commissioner of Highways nor the Department shall expend any funds whatsoever for the purpose of (i) converting the units of measure displayed on any highway sign from English units of measure to metric units of measure, (ii) replacing any highway sign displaying English units of measure with one bearing metric units of measure, or (iii) replacing any highway sign displaying English units of measure with one bearing both English and metric units of measure.

B. The Board, Commissioner of Highways, and Department shall use English units of measure in the design, advertisement, construction, and preparation of plans and specifications of every highway, bridge, tunnel, or overpass construction or maintenance project. However, nothing in this section shall prevent the Board, Commissioner of Highways, or Department from continuing the use of metric units of measure in the design, advertisement, or construction of any project or the preparation of plans or specifications for a project if, prior to July 1, 1999, metric units of measure were used in the design, advertisement, plans, or specifications for the project.

§ 33.2-105. Evidence as to existence of a public highway.

When a way has been worked by highway officials as a public highway and is used by the public as such, proof of these facts shall be prima facie evidence that the same is a public highway. And when a way has been regularly or periodically worked by highway officials as a public highway and used by the public as such continuously for a period of 20 years, proof of these facts shall be conclusive evidence that the same is a public highway. In all such cases, the center of the general line of passage, conforming to the ancient landmarks where such exist, shall be presumed to be the center of the way and in the absence of proof to the contrary, the width shall be presumed to be 30 feet.

Nothing contained in this section shall be construed to convert into a public highway a way of which the use by the public has been or is permissive and the work thereon by the highway officials has been or is done under permission of the owner of the servient tenement.

§ 33.2-106. Secretary of Transportation to submit annual report on actions taken to increase transit use, etc.

The Secretary, in consultation and cooperation with the Commissioner of Highways and the Director of the Department of Rail and Public Transportation, shall annually, not later than November 1, submit to the General Assembly a report on actions taken by the Commonwealth, local governments, and regional transportation authorities to (i) increase transit use and (ii) reduce highway congestion and use of single occupant vehicles through programs and initiatives involving transportation demand management, transit use, telecommuting, carpooling, construction of commuter parking facilities, use of flexible work hours, and telecommunications technology.

§ 33.2-107. Secretary of Transportation to conduct periodic examination of process.

The Secretary shall, at least once every four years, cause to be conducted an examination of the approval process for maintenance and improvements within the secondary and urban highway systems and adopt policies and procedures to reduce review redundancy and to allow approval at the district office level to the maximum extent practical.

§ 33.2-108. Public hearings prior to undertaking projects requested by institutions of higher education.

Before any safety-related or congestion management-related highway project requested by any college, university, or other institution of higher education is undertaken in the Commonwealth, the college, university, or other institution of higher education shall conduct at least one public hearing to afford owners of property in the vicinity of the project and users of highways in the vicinity of or likely to be affected by the project an opportunity to submit comments and make their views known regarding the project.

Not less than 30 days prior to any such hearing, a notice of the time and place of the hearing shall also be published by the college, university, or other institution of higher education at least once in a newspaper published or having a general circulation in the locality in which the project is to be located and established.

§ 33.2-109. Policy of the Commonwealth regarding use of highways by motorcycles; discrimination by political subdivisions prohibited.

In formulating transportation policy, promulgating regulations, allocating funds, and planning, designing, constructing, equipping, operating, and maintaining transportation facilities, no action of the Board, Commissioner of Highways, or Department shall in any way have the effect of discriminating against motorcycles, motorcycle operators, or motorcycle passengers. No regulation or action of the Board, Commissioner of Highways, or Department shall have the effect of enacting a prohibition or imposing a requirement that applies only to motorcycles or motorcyclists and the principal purpose of which is to restrict or inhibit access of motorcycles and motorcyclists to any highway, bridge, tunnel, or other transportation facility.

The provisions of this section shall also apply to transportation facilities and projects undertaken or operated by localities and other political subdivisions of the Commonwealth where public funds have been used in whole or in part to plan, design, construct, equip, operate, or maintain the facility or project.

§ 33.2-110. Gates across private roads; leaving gates open; gates across private roads leading to forestlands; penalties.

A. Any person owning land over which another or others have a private road or right-of-way may, except when it is otherwise provided by contract, erect and maintain gates across such roads or right-of-way at all points at which fences extend to such roads on each side thereof, provided that a court of competent jurisdiction may, upon petition, where it is alleged and proved by petitioner that the gates have been willfully and maliciously erected, require the landowner to make such changes as may be necessary and reasonable in the use of such roads for both the landowner and the petitioner.

B. If any person without permission of the owners of such gate or of the land on which the gate is located leaves the gate open, he is guilty of a Class 1 misdemeanor.

C. The owners of forest and timberlands may substantially obstruct or close private and seldom used roads leading to or into such forest or timberlands from the public highways of the Commonwealth at points at or near which the private roads enter their property or forestlands; and, in all cases where any such private road is subject to an easement for travel for the benefit of other lands not regularly and continuously inhabited, the owner of such forest or timberlands may obstruct the road with a gate, chain, cable, or other removable obstruction, lock the obstruction, and after furnishing a key to the lock to the owner or owners of the land or lands to which the forestlands are servient, require those entitled to the easement to unlock and relock such obstruction upon making use of the road.

There shall be no penalty upon the owner of such forest or timberlands for failure to erect such obstructions, but if such obstruction is erected, any person without the permission of the owner who destroys, removes, or leaves the obstruction open or unlocked, in cases where the obstruction is locked by the owner and the keys are furnished as provided in this subsection, is guilty of a misdemeanor punishable by a fine of not less than $25 nor more than $500, provided that in all cases of forest fires upon the owner's lands or those adjacent or near thereto, the expressed permission of the owner shall be deemed given to all persons aiding in extinguishing or preventing the spreading of the fire to remove the obstructions, including the breaking of locks.

§ 33.2-111. Funding and undertaking of pedestrian or bicycle projects apart from highway projects not prohibited.

Nothing contained in this chapter and no regulation promulgated by the Commissioner of Highways or the Board shall be construed to prohibit or limit the ability of the Board or the Department to fund and undertake pedestrian or bicycle projects except in conjunction with highway projects.

§ 33.2-112. Sidewalks and walkways for pedestrian traffic.

The Board may construct such sidewalks or walkways on the bridges and along the highways under its jurisdiction as it deems necessary for the protection of pedestrian traffic.

All provisions of law with respect to the acquisition of lands and interests therein and the construction, reconstruction, alteration, improvement, and maintenance of highways in the primary and secondary state highway systems, including the exercise of the power of eminent domain by the Board and the Commissioner of Highways, shall be applicable to such sidewalks and walkways.

§ 33.2-113. Contributions by cities or towns towards highway building, bridges, etc.

Any city or town, acting by and through its governing body, may contribute funds or other aid within the control of the city or town toward the building or improvement of permanent public highways leading to the city or town, or of bridges, or to the purchase of bridges, or the establishment, maintenance, or operation of ferries, when in the judgment of such governing body such action will tend to promote the material interest of such city or town. But no contribution shall be made toward the building or improvement of any highway or bridge, or the purchase of bridges, or any ferry, at any point more than 40 miles beyond the corporate limits of the city or town, as measured along the route of such highway.

§ 33.2-114. Virginia Aviation Board and Virginia Port Authority powers.

The powers of the Virginia Aviation Board set out in Chapter 1 (§ 5.1-1 et seq.) of Title 5.1 and the Virginia Port Authority set out in Chapter 10 (§ 62.1-128 et seq.) of Title 62.1 are in no way diminished by the provisions of this title.

CHAPTER 2.

TRANSPORTATION ENTITIES.

Article 1.

Commonwealth Transportation Board; Membership and Organization.

§ 33.2-200. Commonwealth Transportation Board; membership; terms; vacancies.

The Board shall have a total membership of 18 members that shall consist of 14 nonlegislative citizen members and four ex officio members as follows: the Secretary of Transportation, the Commissioner of Highways, the Director of the Department of Rail and Public Transportation, and the Executive Director of the Virginia Port Authority. The nonlegislative citizen members shall be appointed by the Governor as provided in § 33.2-201, subject to confirmation by the General Assembly, and shall serve at the pleasure of the Governor. Appointments of nonlegislative citizen members shall be for terms of four years commencing on July 1, upon the expiration of the terms of the existing members, respectively. Vacancies shall be filled by appointment by the Governor for the unexpired term and shall be effective until 30 days after the next meeting of the ensuing General Assembly and, if confirmed, thereafter for the remainder of the term. No nonlegislative citizen member shall be eligible to serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining that member's eligibility for reappointment. Ex officio members of the Board shall serve terms coincident with their terms of office.

The Secretary shall serve as chairman of the Board and shall have voting privileges only in the event of a tie. The Commissioner of Highways shall serve as vice-chairman of the Board and shall have voting privileges only in the event of a tie when he is presiding during the absence of the chairman. The Director of the Department of Rail and Public Transportation and the Executive Director of the Virginia Port Authority shall not have voting privileges.

§ 33.2-201. Appointment requirements; statewide interest.

Of the members appointed to the Board, one member shall be a resident of the territory now included in the Bristol highway construction district, one in the Salem highway construction district, one in the Lynchburg highway construction district, one in the Staunton highway construction district, one in the Culpeper highway

construction district, one in the Fredericksburg highway construction district, one in the Richmond highway construction district, one in the Hampton Roads highway construction district, and one in the Northern Virginia highway construction district. The remaining five members shall be appointed from the Commonwealth at large, provided that at least two reside in metropolitan statistical areas and are designated as urban at-large members and at least two reside outside metropolitan statistical areas and are designated as rural at-large members. The at-large members shall be appointed to represent rural and urban transportation needs and to be mindful of the concerns of seaports and seaport users, airports and airport users, railways and railway users, and mass transit and mass transit users. Each appointed member of the Board shall be primarily mindful of the best interest of the Commonwealth at large instead of the interests of the highway construction district from which chosen or of the transportation interest represented.

§ 33.2-202. Meetings.

The Board shall meet at least once every three months and at such other times, on the call of the chairman or of a majority of the members, as may be deemed necessary to transact such business as may properly be brought before it. Six members shall constitute a quorum of the Board for all purposes.

It shall be the duty of the Board to keep accurate minutes of all meetings of the Board, in which shall be set forth all acts and proceedings of the Board in carrying out the provisions of this title.

§ 33.2-203. Salaries and expenses.

All salaries and expenses of the Board shall be paid from the state treasury out of the annual appropriation for the Board. Warrants for such salaries and expenses shall be issued by the Comptroller on certificates of the Commissioner of Highways to the parties entitled thereto and shall be paid by the State Treasurer out of the funds appropriated for that purpose.

§ 33.2-204. Offices.

The main office of the Board, the Department of Transportation, and the Department of Rail and Public Transportation shall be located in the City of Richmond. In the discretion of the Commissioner of Highways, other offices of the Department of Transportation may be established in the various highway construction districts of the Commonwealth as may be necessary to carry out the provisions of this title.

§ 33.2-205. Oaths and bonds of members.

Each member of the Board shall, before entering upon the discharge of his duties, take an oath that he will faithfully and honestly execute the duties of the office during his term, and each shall give a bond in such penalty as may be fixed by the Governor conditioned upon the faithful discharge of the duties of his office and the full and proper accounting for all public funds and property coming into his possession or under his control. The premium on such bonds shall be paid out of the state treasury out of the annual appropriation for the Board.

§ 33.2-206. How testimony of members of Commonwealth Transportation Board and Commissioner of Highways taken in civil proceedings.

No member of the Board or the Commissioner of Highways shall be required to leave his office for the purpose of testifying in any suit, action, or other civil proceeding involving any of his official duties, but the deposition of any member of the Board or the Commissioner of Highways may be taken at the main office of the Board in Richmond, after reasonable notice in writing has been given to the adverse party.

Any deposition taken pursuant to this section may be read in the pending suit, action, or other civil proceeding. However, on motion to the court, filed at least 10 days before the commencement of the trial, the judge may, for good cause shown, require any member of the Board or the Commissioner of Highways to attend and testify ore tenus.

§ 33.2-207. Bookkeeping system.

The chairman of the Board shall, with the aid and advice of the Auditor of Public Accounts, cause to be maintained a complete and modern system of bookkeeping for the Department, and the books to be kept by the Department shall show in detail all receipts and disbursements of the Department, the source of such receipts, and the purpose, amount, and recipient of all disbursements.

Article 2.

Commonwealth Transportation Board; Powers and Duties.

§ 33.2-208. Location of routes.

A. The Board shall have the power and duty to locate and establish the routes to be followed by the highways comprising systems of state highways between the points designated in the establishment of such systems, except that such routes shall not include highways or streets located within any local system of highways or streets, within the urban highway system, or those local highways in any county that has resumed full responsibility for all of the secondary state highway system within such county's boundaries pursuant to § 33.2-342. Such routes to be located and established shall include corridors of statewide significance pursuant to § 33.2-353.

B. The Board shall not locate and establish any route pursuant to this section until the Department has (i) published in a newspaper that is published or has a general circulation in the locality in which the route is to be located and established a notice of its willingness to hold a public hearing on the matter, (ii) notified the governing body of the locality in which the route is to be located of its willingness to hold a public hearing on the matter, and (iii) held a public hearing if one has been requested.

If a public hearing is requested, written notice of the time and place of the hearing shall be given not less than 30 days prior to the hearing to the governing body of the locality in which the route is to be located and established. Not less than 30 days prior to the hearing, a notice of the time and place of the hearing shall also be published by the Department at least once in a newspaper published or having a general circulation in the locality in which the route is to be located and established.

All public hearings on the location or possible location of a route shall be open forums that afford citizens opportunities to obtain route location information and other pertinent information on a proposed project and to submit their hearing comments in writing or to present them directly to a verbatim recorder. In addition, upon the written request of a member of the governing body of the locality in which the route is proposed to be located, or upon the written request of 25 citizens, these public hearings shall afford citizens an opportunity to present their comments to representatives of the Department directly, one speaker at a time, in a public forum following a traditional hearing format. A written request for a traditional hearing must be received within 14 days following the first published notice of the hearing or willingness to hold a hearing.

Following the public hearing, if one is held as provided in this section, the Department shall notify the governing body of the affected locality of the Board's decision regarding the location and establishment of the route.

§ 33.2-209. Construction and maintenance contracts and activities related to passenger and freight rail and public transportation.

A. The Board shall have the power and duty to let all contracts to be administered by the Department of Transportation or the Department of Rail and Public Transportation for the construction, maintenance, and improvement of the highways comprising systems of state highways and for all activities related to passenger and freight rail and public transportation in excess of $5 million. The Commissioner of Highways has authority to let all Department of Transportation-administered contracts for highway construction, maintenance, and improvements up to $5 million in value. The Director of the Department of Rail and Public Transportation has the authority to let contracts for passenger and freight rail and public transportation improvements up to $5 million in value. The Commissioner of Highways is authorized to enter into agreements with localities, authorities, and transportation districts to administer projects and to allow those localities, authorities, and transportation districts to let contracts with no limit on contract value and without prior concurrence of the Commissioner of Highways or the Board for highway construction, maintenance, and improvements within their jurisdictions, in accordance with those provisions of this Code providing those localities, authorities, and transportation districts the ability to let such contracts. The Director of the Department of Rail and Public Transportation is authorized to enter into agreements with localities, authorities, and transportation districts to administer projects and to allow those localities, authorities, and transportation districts to let contracts with no limit on contract value and without prior concurrence of the Director of the Department of Rail and Public Transportation or the Board for passenger and freight rail and public transportation activities within their jurisdictions, in accordance with those provisions of this Code providing those localities, authorities, and transportation districts the ability to let such contracts. The

Commissioner of Highways and the Director of the Department of Rail and Public Transportation shall report on their respective transportation contracting activities at least quarterly to the Board.

B. The Board may award contracts for the construction of transportation projects on a design-build basis. These contracts may be awarded after a written determination is made by the Commissioner of Highways or the Director of the Department of Rail and Public Transportation, pursuant to objective criteria previously adopted by the Board regarding the use of design-build, that delivery of the projects must be expedited and that it is not in the public interest to comply with the design and construction contracting procedures normally followed. Such objective criteria shall include requirements for prequalification of contractors and competitive bidding processes. These contracts shall be of such size and scope to encourage maximum competition and participation by agency prequalified and otherwise qualified contractors. Such determination shall be retained for public inspection in the official records of the Department of Transportation or the Department of Rail and Public Transportation, as the case may be, and shall include a description of the nature and scope of the project and the reasons for the Commissioner's or the Director's determination that awarding a design-build contract will best serve the public interest. The provisions of this section shall supersede contrary provisions of subsection D of § 2.2-4303 and § 2.2-4306.

C. The Board may award contracts for the provision of equipment, materials, and supplies to be used in construction of transportation projects on a fixed-price basis. Any such contract may provide that the price to be paid for the provision of equipment, materials, and supplies to be furnished in connection with the projects shall not be increased but shall remain fixed until completion of the projects specified in the contracts. Material components of any such contract for annual and multiyear programs, including maintenance, may be fixed at the outset of the projects and until completion based on best achievable prices.

§ 33.2-210. Traffic regulations; penalty.

A. The Board shall have the power and duty to make regulations that are not in conflict with the laws of the Commonwealth for the protection of and covering traffic on and for the use of systems of state highways and shall have the authority to add to, amend, or repeal such regulations.

B. The regulations, together with any additions or amendments thereto, prescribed by the Board under the authority of this section shall have the force and effect of law, and any person, firm, or corporation violating any such regulation or any addition or amendment thereto is guilty of a misdemeanor punishable by a fine of not less than $5 nor more than $100 for each offense. Such person shall be civilly liable to the Commonwealth for the actual damage sustained by the Commonwealth by reason of his wrongful act. Such damages may be recovered at the suit of the Board and, when collected, paid into the state treasury to the credit of the Department. Any regulations promulgated by the Board shall be developed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) except when specifically exempted by law.

§ 33.2-211. Copies of regulations as evidence.

Copies of regulations of the Board and of additions or amendments thereto printed under the authority of the Board shall be admissible in all of the courts of the Commonwealth without further proof and given the force and effect prescribed hereby, and the fact that such printed copies bear the name of the Board shall be prima facie evidence that they are duly adopted and promulgated under the provisions of this title and that they are true copies of the regulations, or of any additions and amendments thereto, adopted pursuant to the provisions of subsection A of § 33.2-210.

§ 33.2-212. Sections not applicable to certain engines and tractors.

The provisions of §§ 33.2-210 and 33.2-211 shall not apply to traction engines and tractors weighing not less than five tons when drawing threshing machines, hay balers, or other farm machinery for local farm use.

§ 33.2-213. Naming highways, bridges, interchanges, and other transportation facilities.

The Board shall have the power and duty to give suitable names to state highways, bridges, interchanges, and other transportation facilities and change the names of any highways, bridges, interchanges, or other transportation facilities forming a part of the systems of state highways. The names of private entities, as defined in § 33.2-1800, located within the Commonwealth shall not be used for such purposes unless such private entity pays the Department an annual naming rights fee as determined by the Board. The Department shall place and maintain appropriate signs indicating the names of highways, bridges, interchanges, and other transportation facilities named by the Board or by the General Assembly. The costs of producing, placing, and

maintaining these signs shall be paid by the localities in which they are located or by the private entity whose name is attached to the highway, bridge, interchange, or other transportation facility. No name shall be given to any state highway, bridge, interchange, or other transportation facility by the Board unless and until the Board receives from the governing body of the locality within which a portion of the facility to be named is located a resolution of that governing body requesting such naming, except in such cases where a private entity has requested the naming. No highway, bridge, interchange, or other transportation facility previously named by the Board or the General Assembly shall be eligible for renaming by a private entity, unless such naming incorporates the previous name. The Board shall develop and approve guidelines governing the naming of highways, bridges, interchanges, and other transportation facilities by private entities and the applicable fees for such naming rights. Such fees shall be deposited in the Highway Maintenance and Operating Fund established pursuant to § 33.2-1530.

No name shall be eligible for the naming rights under this section if it in any way reasonably connotes anything that (i) is profane, obscene, or vulgar; (ii) is sexually explicit or graphic; (iii) is excretory related; (iv) is descriptive of intimate body parts or genitals; (v) is descriptive of illegal activities or substances; (vi) condones or encourages violence; or (vii) is socially, racially, or ethnically offensive or disparaging.

§ 33.2-214. Transportation; Six-Year Improvement Program.

A. The Board shall have the power and duty to monitor and, where necessary, approve actions taken by the Department of Rail and Public Transportation pursuant to Article 5 (§ 33.2-281 et seq.) in order to ensure the efficient and economical development of public transportation, the enhancement of rail transportation, and the coordination of such rail and public transportation plans with highway programs.

B. The Board shall have the power and duty to coordinate the planning for financing of transportation needs, including needs for highways, railways, seaports, airports, and public transportation and set aside funds as provided in § 33.2-1524. To allocate funds for these needs pursuant to §§ 33.2-358 and 58.1-638, the Board shall adopt a Six-Year Improvement Program of anticipated projects and programs by July 1 of each year. This program shall be based on the most recent official Transportation Trust Fund revenue forecast and shall be consistent with a debt management policy adopted by the Board in consultation with the Debt Capacity Advisory Committee and the Department of the Treasury.

C. The Board shall have the power and duty to enter into contracts with local districts, commissions, agencies, or other entities created for transportation purposes.

D. The Board shall have the power and duty to promote increasing private investment in the Commonwealth's transportation infrastructure, including acquisition of causeways, bridges, tunnels, highways, and other transportation facilities.

E. The Board shall have the power and duty to integrate land use with transportation planning and programming, consistent with the efficient and economical use of public funds. If the Board determines that a local transportation plan described in § 15.2-2223 or any amendment as described in § 15.2-2229 or a metropolitan regional long-range transportation plan or regional Transportation Improvement Program as described in § 33.2-3201 is not consistent with the Board's Statewide Transportation Plan developed pursuant to § 33.2-353, the Six-Year Improvement Program adopted pursuant to subsection B, and the location of routes to be followed by roads comprising systems of state highways pursuant to subsection A of § 33.2-208, the Board shall notify the locality of such inconsistency and request that the applicable plan or program be amended accordingly. If, after a reasonable time, the Board determines that there is a refusal to amend the plan or program, then the Board may reallocate funds that were allocated to the nonconforming project as permitted by state or federal law. However, the Board shall not reallocate any funds allocated pursuant to § 33.2-319, 33.2-348, 33.2-362, or 33.2-366, based on a determination of inconsistency with the Board's Statewide Transportation Plan or the Six-Year Improvement Program nor shall the Board reallocate any funds, allocated pursuant to subdivision C 3 of § 33.2-358, from any projects on highways controlled by any county that has withdrawn, or elects to withdraw, from the secondary system of state highways based on a determination of inconsistency with the Board's Statewide Transportation Plan or the Six-Year Improvement Program. If a locality or metropolitan planning organization requests the termination of a project, and the Department does not agree to the termination, or if a locality or metropolitan planning organization does not advance a project to the next phase of construction when requested by the Board and the Department has

expended state or federal funds, the locality or the localities within the metropolitan planning organization may be required to reimburse the Department for all funds expended on the project. If, after design approval by the Chief Engineer of the Department, a locality or metropolitan planning organization requests alterations to a project that, in the aggregate, exceeds 10 percent of the total project costs, the locality or the localities within the metropolitan planning organization may be required to reimburse the Department for the additional project costs above the original estimates for making such alterations.

§ 33.2-215. Policies and operation of Departments.

The Board shall have the power and duty to review and approve policies and transportation objectives of the Department of Transportation and the Department of Rail and Public Transportation, to assist in establishing such policies and objectives, to oversee the execution thereof, and to report on these policies and objectives to the Commissioner of Highways and the Director of the Department of Rail and Public Transportation, respectively.

§ 33.2-216. Roadside memorials; penalty.

A. The Board shall establish regulations regarding size, distance from the roadway, and other safety concerns to govern the installation, maintenance, and removal of roadside memorials, plaques, and other devices placed within the right-of-way that commemorate the memory of persons killed in vehicle crashes within the right-of-way of any state highway.

B. Any person who installs any plaque, device, sign, object, material, or other memorial within the right-of-way of any highway controlled by the Department except in accordance with criteria established as provided in this section may be assessed a civil penalty of no more than $100. Each occurrence shall be subject to a separate penalty. All civil penalties collected under this section shall be paid into the Highway Maintenance and Operating Fund established pursuant to § 33.2-1530.

§ 33.2-217. Prohibition of certain weeds and plants on highway rights-of-way.

Neither the Board nor the Commissioner of Highways shall plant or cause or suffer to be planted on the right-of-way of any state highway any of the weeds or plants known as devil shoestring (Tephrosia virginiana), Johnson grass (Sorghum halepense), or barberry (Berberis vulgaris) if the governing body of the county in which the highway is located declares by resolution such weeds or plants to be injurious to adjacent property.

The Board shall cause all such weeds or plants planted or caused to be planted by the Board or Commissioner of Highways on any state highway right-of-way to be dug up and destroyed.

Any owner of land adjacent to any state or other public highway right-of-way, or his agents and employees, may dig up, cut down, or otherwise remove and destroy any of such plants or weeds and any other plants or weeds that are or may become noxious or otherwise injurious to his property found growing upon any state or other public highway right-of-way adjacent to his land.

§ 33.2-218. Fees for participating in the Integrated Directional Sign Program.

The Board shall establish reasonable fees to be collected by the Commissioner of Highways from any qualified entity for the purpose of participating in the Integrated Directional Sign Program (IDSP) administered by the Department or its agents that is designed to provide information to the motoring public relating to gasoline and motor vehicle services, food, lodging, attractions, or other categories as defined by the IDSP. Such fees shall be deposited into a special fund specifically accounted for and used by the Commissioner of Highways solely to defray the actual costs of supervising and administering the signage programs. Included in these costs shall be a reasonable margin, not to exceed 10 percent, in the nature of a reserve fund.

§ 33.2-219. Statements to be filed with Commonwealth Transportation Board by transit systems.

Any transit system that conducts its operations within the exclusive jurisdiction of any locality or within the boundaries of any district as defined in § 33.2-1901, and any adjoining locality, shall file annually with the Board such financial and other statistical data as the Board shall require in order to effectively administer the provisions of § 46.2-206 and shall file with the Department of Rail and Public Transportation, at such times as the Department of Rail and Public Transportation shall require, such information as the Department of Rail and Public Transportation shall require to carry out its duties under subdivision 4 of § 33.2-285.

The provisions of this section shall not be construed so as to exempt any such transit system from any provision of law or regulation made pursuant to law that requires the filing of data with any other agency of the Commonwealth.

§ 33.2-220. Transfer of interest in and control over certain highways, highway rights-of-way, and landings.

Notwithstanding any contrary provision of this title, the Board, upon receipt of a written request from a public access authority established pursuant to Title 15.2 and without first abandoning or discontinuing such highway, highway right-of-way, or landing, including a wharf, pier, or dock, may transfer to such requesting authority any and all rights and interests of the Board in a highway, highway right-of-way, or landing as the Board may deem in the public interest. Such transfer may be either with or without compensation from the requesting authority.

§ 33.2-221. Other powers, duties, and responsibilities.

A. The Board shall have the power and duty to comply fully with the provisions of the present or future federal aid acts. The Board may enter into all contracts or agreements with the United States government and may do all other things necessary to carry out fully the cooperation contemplated and provided for by present or future acts of Congress related to transportation.

B. The Board shall have the power and duty to enter into all contracts with other states necessary for the proper coordination of the location, construction, maintenance, improvement, and operation of transportation systems, including the systems of state highways with the highways of such other states, and where necessary, seek the approval of such contracts by the Congress of the United States.

C. The Board shall have the power and duty to administer, distribute, and allocate funds in the Transportation Trust Fund as provided by law. The Board shall ensure that the total funds allocated to any highway construction project are equal to total expenditures within 12 months following completion of the project. However, this requirement shall not apply to debt service apportionments pursuant to § 33.2-362 or 33.2-364.

D. The Board shall have the power and duty, with the advice of the Secretary of Finance and the State Treasurer, to engage a financial advisor and investment advisor who may be anyone within or without the government of the Commonwealth to assist in planning and making decisions concerning the investment of funds and the use of bonds for transportation purposes. The work of these advisors shall be coordinated with the Secretary of Finance and the State Treasurer.

E. The Board shall have the power and duty to enter into payment agreements with the Treasury Board related to payments on bonds issued by the Commonwealth Transportation Board.

F. When the traffic-carrying capacity of any of the systems of state highways or a portion thereof is increased by construction or improvement, the Board may enter into agreements with localities, authorities, and transportation districts to establish highway user fees for such system of state highways or portion thereof that the localities, authorities, and transportation districts maintain.

Article 3.

Commissioner of Highways.

§ 33.2-222. Commissioner of Highways.

The Commissioner of Highways shall be the chief executive officer of the Department of Transportation. The Commissioner of Highways shall be an experienced administrator able to direct and guide the Department in the establishment and achievement of the Commonwealth's long-range highway and other transportation objectives.

The Commissioner of Highways shall devote his entire time and attention to his duties as chief executive officer of the Department and shall receive such compensation as shall be fixed by law. He shall also be reimbursed for his actual travel expenses while engaged in the discharge of his duties.

In the event of a vacancy due to the death, temporary disability, retirement, resignation, or removal of the Commissioner of Highways, the Governor may appoint and thereafter remove at his pleasure an "Acting Commissioner of Highways" until such time as the vacancy may be filled as provided in § 33.2-200. Such "Acting Commissioner of Highways" shall have all powers and perform all duties of the Commissioner of Highways as provided by law and shall receive such compensation as may be fixed by the Governor. In the

event of the temporary disability for any reason of the Commissioner of Highways, full effect shall be given to the provisions of § 2.2-605.

§ 33.2-223. General powers of Commissioner of Highways.

Except such powers as are conferred by law upon the Board, the Commissioner of Highways shall have the power to do all acts necessary or convenient for constructing, improving, maintaining, and preserving the efficient operation of the highways embraced in the systems of state highways and to further the interests of the Commonwealth in the areas of public transportation, railways, seaports, and airports. And as executive head of the Department, the Commissioner of Highways is specifically charged with the duty of executing all orders and decisions of the Board and may, subject to the provisions of this chapter, require that all appointees and employees perform their duties under this chapter.

In addition, the Commissioner of Highways, in order to maximize efficiency, shall take such steps as may be appropriate to outsource or privatize any of the Department's functions that might reasonably be provided by the private sector.

§ 33.2-224. Employees; delegation of responsibilities.

The Commissioner of Highways shall employ such engineers, clerks, assistants, and other employees as may be needed and shall prescribe and fix their duties, including the delegation of duties and responsibilities conferred or imposed upon the Commissioner of Highways by law. They shall receive all salaries and expenses as may be fixed in accordance with the provisions of law.

§ 33.2-225. Liaison duties with other organizations.

Tasks and responsibilities concerning transportation program or project delivery shall be carried out as follows:

1. The Commissioner of Highways shall cooperate with the federal government, the American Association of State Highway and Transportation Officials, and any other organization in the numbering, signing, and marking of highways; in the taking of measures for the promotion of highway safety; in research activities; in the preparation of standard specifications; in the testing of highway materials; and otherwise with respect to transportation projects.

2. The Department of Transportation and the Department of Rail and Public Transportation may offer technical assistance and coordinate state resources, as available, to work with local governments, upon their request, in developing sound transportation components for their local comprehensive plans.

§ 33.2-226. Authority to lease or convey airspace.

The Commissioner of Highways may lease or sell and convey the airspace superjacent or subjacent to any highway in the Commonwealth that is within his jurisdiction and in which the Commonwealth owns fee simple title after satisfying itself that use of the airspace will not impair the full use and safety of the highway or otherwise interfere with the free flow of traffic thereon and it cannot be reasonably foreseen as needed in the future for highway and other transit uses and purposes. The Commissioner of Highways may provide in such leases and conveyances of airspace for columns of support, in fee or otherwise, ingress, egress, and utilities.

No lease or conveyance shall be entered into by the Commissioner of Highways until after the time the locality, by action of its governing body by majority recorded vote, approves the projected use and has zoned the airspace in question or has otherwise taken such steps as it deems proper to regulate the type and use of the improvements to be erected in such airspace.

All leases and conveyances shall contain those terms deemed necessary by the Commissioner of Highways to protect the interests of the Commonwealth and the public and shall not be entered into until after public advertising for bids for such airspace. The Commissioner of Highways shall advertise for bids at least 14 days prior to the execution of a lease or a conveyance. The advertisement shall state the place where bidders may examine a map of the airspace, the general terms of the lease or conveyance and the time and place when bids will be opened by the Commissioner of Highways. The highest bid from a responsible bidder, in the sole discretion of the Commissioner of Highways, shall be accepted; however, the Commissioner of Highways may reject all bids and advertise the property again.

Compensation paid for such leases and conveyances shall be credited to the Transportation Trust Fund established pursuant to § 33.2-1524.

§ 33.2-227. Defense of employees.

If any person employed by the Commonwealth Transportation Board, the Department of Transportation, or the Department of Rail and Public Transportation is arrested or indicted or otherwise prosecuted on any charge arising out of any act committed in the discharge of his official duties, the Commissioner of Highways or the Director of the Department of Rail and Public Transportation may employ special counsel approved by the Attorney General to defend such employee. The compensation for special counsel employed, pursuant to this section, shall, subject to the approval of the Attorney General, be paid by the agency for which the employee works out of the funds appropriated for the administration of the Department of Transportation or the Department of Rail and Public Transportation.

§ 33.2-228. Agreements between Commissioner of Highways and certain cities and towns.

Notwithstanding the provisions of §§ 33.2-209, 33.2-214, 33.2-221, and 33.2-362, the Commissioner of Highways, pursuant to a resolution adopted by the Board and following receipt of a resolution adopted by the governing body of a city or town to which funds are apportioned pursuant to § 33.2-362, may enter into an agreement with any such city or town pursuant to which the city or town assumes responsibility for the design, right-of-way acquisition, and construction of urban system highways or portions thereof in such city or town, using funds allocated pursuant to subdivision C 2 of § 33.2-358.

§ 33.2-229. Furnishing information regarding right-of-way transactions.

Upon written request to the central office of the Department, the Commissioner of Highways shall furnish information regarding right-of-way transactions where any public funds are expended. Such information shall not be released prior to 60 days following the transaction to any person not a party directly interested in such transaction.

The information furnished under this section shall consist of (i) the name of the person to whom any sum was paid for land or interest therein, (ii) the amount of land or interest therein acquired from such person, and (iii) the amount paid such person for land and the amount paid for damage resulting to the remaining property of such person.

§ 33.2-230. Written notice of decision to dispose of real property.

Whenever the Board or the Department decides to sell or otherwise dispose of any surplus real property, the Commissioner of Highways shall provide written notice of such decision to the mayor or chairman of the governing body of the locality in which the property or any portion thereof is located. Any failure to provide or receive such notice shall not create a cloud on the title to the property.

§ 33.2-231. Establish community service landscaping program.

The Commissioner of Highways shall establish a program whereby persons convicted of nonviolent misdemeanors who have received a suspended sentence or probation can fulfill their community service requirements by mowing rights-of-way and performing other landscaping maintenance tasks for roads and highways that the Department has the responsibility to maintain.

§ 33.2-232. Annual report by Commissioner of Highways.

The Commissioner of Highways shall annually report in writing to the Governor and General Assembly, no later than November 30 each year, on (i) the condition and performance of the existing transportation infrastructure, using an asset management methodology and generally accepted engineering principles and business practices to identify and prioritize maintenance and operations needs and to identify performance standards to be used to determine those needs, and funding required to meet those needs; (ii) the Department's strategies for improving safety and security, increasing efficiency in agency programs and projects, and collaborating with the private sector and local government in the delivery of services; (iii) the operating and financial activities of the Department, including the construction and maintenance programs, transportation costs and revenue, and federal allocations; and (iv) other such matters of importance to transportation in the Commonwealth.

§ 33.2-233. Gathering and reporting of information and statistics.

The Commissioner of Highways and the Director of the Department of Rail and Public Transportation shall gather and tabulate information and statistics relating to transportation and disseminate the same throughout the Commonwealth. In addition, the Commissioner of Highways shall provide a report to the Governor, the General Assembly, the Board, and the public concerning the current status of all highway

construction projects in the Commonwealth. This report shall be posted at least four times each fiscal year but may be updated more often as circumstances allow. The report shall contain, at a minimum, the following information for every project in the Six-Year Improvement Program: (i) project description; (ii) total cost estimate; (iii) funds expended to date; (iv) project timeline and completion date; (v) statement of whether project is ahead of, on, or behind schedule; (vi) the name of the prime contractor; (vii) total expenditures of federal transportation funds in each county and city; (viii) total expenditures of state transportation funds in each county and city; (ix) statewide totals for federal, state, and local funds expended for highways; (x) statewide totals for federal, state, and local funds expended for transit; (xi) total funds expended on intercity passenger and freight rail line and trains; and (xii) total funds expended in each federal and state programmatic category. Use of one or more websites may be used to satisfy this requirement. Project-specific information posted on the Internet shall be updated daily as information is available.

§ 33.2-234. Construction by state or local employees.

A. Irrespective of the provisions of § 33.2-235, in cases of emergency or on any project reasonably estimated to cost not more than $600,000, the Commissioner of Highways may build or maintain any of the highways in the systems of state highways by state employees or local employees as he may designate.

B. Notwithstanding the provisions of subsection A, the Commissioner of Highways may enter into a written agreement with a locality for the building and maintenance of any of the highways in the systems of state highways by local employees provided that (i) the locality has obtained a cost estimate for the work of not more than $1 million and (ii) the locality has issued an invitation for bid and has received fewer than two bids from private entities to build or maintain such highways.

§ 33.2-235. Procurement.

All projects reasonably estimated to cost $300,000 or more that the Board or the Commissioner of Highways may undertake for construction shall be let in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.). When such projects are reasonably estimated to cost below $300,000, the Commissioner of Highways may let them to contract, and if such projects are let to contract, they shall be let only in accordance with the Virginia Public Procurement Act.

As used in this section, "project" means construction and does not include routine maintenance work or the installation of traffic control devices, unless such work is to be performed under contract.

§ 33.2-236. Maps or plats prepared at request and expense of local governing bodies and other groups; Department of Mines, Minerals and Energy to seek other existing sources.

The Commissioner of Highways may prepare photogrammetric maps or plats of specific sites or areas at the request of the governing bodies of localities of the Commonwealth, local nonprofit industrial development agencies, planning district commissions, soil and water conservation districts, metropolitan planning organizations, public service authorities, and local chambers of commerce. The Department of Mines, Minerals and Energy shall first review the request to determine whether suitable or alternate maps or plats are currently available, and the local governing body, agency, or chamber shall agree to reimburse the Department of Transportation for the cost of producing the maps or plats.

§ 33.2-237. Directional signs for certain educational institutions.

For the purpose of this section, "Virginia educational institution" means a for-profit educational institution with its main campus located in the Commonwealth that (i) has, for at least five consecutive years prior to making a request under this section, awarded academic degrees approved by the State Council of Higher Education for Virginia; (ii) offers programs in workforce training or job readiness that contribute to Virginia's economic growth and development; and (iii) has a combined annual enrollment of at least 1,000 students at its main campus and any branch location situated within a radius of 25 miles from the main campus.

Upon request from a Virginia educational institution, the Commissioner of Highways shall erect and maintain signs at appropriate and conspicuous locations along interstate, primary, or secondary highways providing motorists directions to the main or branch location of any such institution. All costs associated with production and erection of signs under this section shall be borne by the affected institution, but all costs associated with maintenance of those signs shall be borne by the Department.

Signs erected by the Department under this section shall be placed in accordance with all applicable Department regulations.

§ 33.2-238. Closing highways for safety of public or proper completion of construction; injury to barriers, signs, etc.

If it appears to the Commissioner of Highways necessary for the safety of the traveling public or for proper completion of work that is being performed to close any highway under his jurisdiction to all traffic or any class of traffic, the Commissioner of Highways may close, or cause to be closed, the whole or any portion of such highway deemed necessary to be excluded from public travel and may exclude all or any class of traffic from such closed portion. While any such highway or portion thereof is so closed, or while any such highway or portion thereof is in process of construction or maintenance, the Commissioner of Highways, or contractor under authority from the Commissioner of Highways, may erect, or cause to be erected, suitable barriers or obstructions thereon, may post, or cause to be posted, conspicuous notices to the effect that the highway or portion thereof is closed and may place warning signs, lights, and lanterns on such highway or portion thereof. When such highway is closed for the safety of the traveling public or in process of construction or maintenance as provided in this section, any person who willfully breaks down, drives into new construction work, removes, injures, or destroys any such barrier or barriers or obstructions, tears down, removes, or destroys any such notices, or extinguishes, removes, injures, or destroys any such warning lights or lanterns so erected, posted, or placed is guilty of a Class 1 misdemeanor.

§ 33.2-239. Providing highway detours.

Whenever necessary, the Commissioner of Highways shall select, lay out, maintain, and keep in as good repair as possible suitable detours, by the most practical route, while the highways are being improved or constructed, and he shall place or cause to be placed explicit directions to the traveling public during repair of any such highway under process of construction.

§ 33.2-240. Connections over shoulders of highways for intersecting private roads.

The Commissioner of Highways shall permit suitable connections from where private roads leading to and from private homes intersect improved highways and over and across the shoulders and unimproved parts of such highways to the paved or otherwise improved parts thereof to provide the users of such private roads safe and convenient means of ingress and egress with motor vehicles to and from the paved or otherwise improved parts of such highways.

§ 33.2-241. Connections over shoulders of highways for intersecting commercial establishment entrances; penalty.

The Commissioner of Highways shall permit suitable connections from where commercial establishment entrances are desired to intersect improved highways and over and across the shoulders and unimproved parts of such highways to the paved or otherwise improved parts thereof that comply with the access management standards of the Commissioner of Highways for the location, spacing, and design of entrances, taking into account the operating characteristics and federal functional classification of the highway, to provide the users of such entrances safe and convenient means of ingress and egress with motor vehicles to and from the paved or otherwise improved parts of such highways while minimizing the impact of such ingress and egress on the operation of such highways, provided that any person desiring such an entrance shall:

1. Be required first to obtain a permit therefor from the Commissioner of Highways;

2. Provide the entrance at his expense;

3. If required by the Commissioner of Highways, provide for the joint use of the desired entrance with adjacent property owners or provide evidence of such efforts; and

4. Construct the entrance or have the entrance constructed, including such safety structures as are required by the Commissioner of Highways, pursuant to the Department of Transportation's design standards and applicable Department regulations concerning access management and applicable Board regulations concerning land use permits.

All commercial entrances whether or not constructed under this section shall be maintained by the owner of the premises at all times in a manner satisfactory to the Commissioner of Highways.

Any person violating the provisions of this section is guilty of a misdemeanor punishable by a fine of not less than $5 nor more than $100 for each offense. Following a conviction and 15 days for correction, each day

during which the violation continues shall constitute a separate and distinct offense and be punishable as such. Such person shall be civilly liable to the Commonwealth for actual damage sustained by the Commonwealth by reason of his wrongful act.

§ 33.2-242. Replacing entrances destroyed in the repair or construction of highways.

The Commissioner of Highways shall review the existing access to any parcel of land having an entrance destroyed in the repair or construction of the systems of state highways and shall provide access to the systems of state highways in a manner that will serve the parcel of land and ensure efficient and safe highway operation.

§ 33.2-243. Paying for damages sustained to personal property by reason of work projects, etc.

The Commissioner of Highways may pay and settle claims and demands against the Commonwealth arising as a result of damages sustained to personal property by reason of work projects or the operation of state-owned or operated equipment when engaged in the construction, reconstruction, or maintenance of the primary state highway system, unless said claims or demands arise as a result of negligence of the person asserting such claims or demands. Nothing in this section shall be construed as imposing any legal liability upon the Commonwealth to pay such claims or demands, nor as giving the consent of the Commonwealth to be sued in any action or suit to recover on such claims or demands in the event the Commissioner of Highways refuses payment of said claims or demands.

§ 33.2-244. Removal of snow and ice from public highways by private entities.

Upon request by a person, the Commissioner of Highways may authorize such person to hire private persons, firms, contractors, or entities to remove snow and ice from any public highway in Planning District 8, provided that there will be no costs to the Commonwealth or its political subdivisions for work pursuant to this section. No private person, firm, contractor, or entity employed to remove snow and ice from any public highway shall be afforded sovereign immunity or immunity in any form whatsoever. Private persons, firms, contractors, or entities so employed shall be liable for civil damages, including damages for death, injury, or property damage resulting from any act or omission relating to the removal of snow and ice from public highways. Nothing contained in this section shall limit the authority of the Commissioner of Highways granted under other provisions of law to authorize or contract for the removal of snow and ice from public highways.

§ 33.2-245. Comprehensive highway access management standards.

A. For purposes of this section, "comprehensive highway access management standards" means a coordinated set of state standards and guidelines that allow the Commonwealth and its localities to manage access to the systems of state highways according to their federal functional classification or operational characteristics through the control of and improvements to the location, number, spacing, and design of entrances, median openings, turn lanes, street intersections, traffic signals, and interchanges.

B. The General Assembly declares it to be in the public interest that comprehensive highway access management standards be developed and implemented to enhance the operation and safety of the systems of state highways in order to protect the public health, safety, and general welfare while ensuring that private property is entitled to reasonable access to the systems of state highways. The goals of the comprehensive highway access management standards are:

1. To reduce traffic congestion and impacts to the level of service of highways, leading to reduced fuel consumption and air pollution;

2. To enhance public safety by decreasing traffic crash rates;

3. To support economic development in the Commonwealth by promoting the efficient movement of people and goods;

4. To reduce the need for new highways and road widening by improving the performance of the existing systems of state highways; and

5. To preserve public investment in new highways by maximizing their performance.

C. The Commissioner of Highways shall develop and implement comprehensive highway access management standards for managing access to and preserving and improving the efficient operation of the systems of state highways. The comprehensive highway access management standards shall include standards and guidelines for the location, number, spacing, and design of entrances, median openings, turn lanes, street intersections, traffic signals, and interchanges.

Nothing in such standards shall preempt the authority of a local government to regulate the type or density of land uses abutting the systems of state highways.

§ 33.2-246. Recreational waysides; regulations; penalties.

A. To promote the safety, convenience, and enjoyment of travel on, and protection of the public investment in, highways of the Commonwealth and for the restoration, preservation, and enhancement of scenic beauty within and adjoining such highways, it is hereby declared to be in the public interest to acquire and establish recreational waysides and areas of scenic beauty adjoining the highways of the Commonwealth.

B. The Commissioner of Highways may, whenever in his opinion it is in the best interest of the Commonwealth, accept from the United States, or any authorized agency thereof, a grant or grants of any recreational waysides established and constructed by the United States, or any such agency thereof, or a grant or grants of funds for landscaping and scenic enhancement of highways, and the Commissioner of Highways may, on behalf of the Commonwealth, enter into a contract or contracts with the United States, or any such agency thereof, to maintain and operate any such recreational waysides that may be so granted to the Commonwealth and may do all things necessary to receive and expend federal funds for landscaping and scenic enhancement.

C. The Commissioner of Highways may, whenever it is in the best interest of the operation of the Interstate System or the primary or secondary state highway system, establish, construct, maintain, and operate appropriate recreational waysides and areas of scenic beauty adjoining such highways.

D. The Commissioner of Highways may acquire by purchase, gift, or the power of eminent domain such land or interest in land as may be necessary to carry out the provisions of this section, provided that in exercising the power of eminent domain for areas of scenic beauty, such areas adjoin and lie within 100 feet of the right-of-way of the highway, and the procedure shall be, mutatis mutandis, as provided for the acquisition of land by the Commissioner of Highways in Article 1 (§ 33.2-1000 et seq.) of Chapter 10.

E. The Board may establish regulations for the use of recreational waysides, including regulations relating to (i) the time, place, and manner of parking of vehicles; (ii) activities that may be conducted within such waysides; (iii) solicitation and selling within the waysides; and (iv) such other matters as may be necessary or expedient in the interest of the motoring public.

The regulations when adopted by the Board shall be posted in a conspicuous place at each wayside, along with such other signs as the Commissioner of Highways deems necessary to advise the public.

Any person violating any regulation adopted under this section is guilty of a misdemeanor punishable by a fine of not less than $5 nor more than $100 for each offense.

F. Recreational waysides and areas of scenic beauty when acquired, established, maintained, and operated in accordance with this section shall be deemed to be a part of the Interstate System or primary or secondary state highway system but land acquired for areas of scenic beauty shall not be deemed a part of the right-of-way for the purpose of future acquisition of areas of scenic beauty under the provisions of subsections A through D.

§ 33.2-247. Wetlands mitigation banking.

When authorization is required by federal or state law for any project affecting wetlands and such authorization is conditioned upon compensatory mitigation for adverse impacts to wetlands, the Commissioner of Highways is authorized to expend funds for the purchase of, or is authorized to use, credits from any wetlands mitigation bank, including any owned by the Department of Transportation, that has been approved and is operating in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of mitigation banks as long as (i) the bank is in the same fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, as the impacted site, or in an adjacent subbasin within the same river watershed as the impacted site, or it meets all the conditions found in clauses (a) through (d) and either clause (e) or (f); (ii) the bank is ecologically preferable to practicable on-site and off-site individual mitigation options, as defined by federal wetland regulations; and (iii) the banking instrument, if approved after July 1, 1996, has been approved by a process that included public review and comment. When the bank is not located in the same subbasin or adjacent subbasin within the same river watershed as the impacted site, the purchase or use of credits shall not be allowed unless the Commissioner of Highways demonstrates to the satisfaction of the agency requiring

compensatory mitigation that (a) the impacts will occur as a result of a Department of Transportation linear project; (b) there is no practical same river watershed mitigation alternative; (c) the impacts are less than one acre in a single and complete project within a subbasin; (d) there is no significant harm to water quality or fish and wildlife resources within the river watershed of the impacted site; and either (e) impacts within the Chesapeake Bay watershed are mitigated within the Chesapeake Bay watershed as close as possible to the impacted site or (f) impacts within subbasins 02080108, 02080208, and 03010205, as defined by the National Watershed Boundary Dataset, are mitigated in-kind within those subbasins, as close as possible to the impacted site. After July 1, 2002, the provisions of clause (f) shall apply only to impacts within subdivisions of the listed subbasins where overlapping watersheds exist, as determined by the Department of Environmental Quality, provided the Department of Environmental Quality has made such a determination by that date.

For the purposes of this section, "river watershed" means the Potomac River Basin, Shenandoah River Basin, James River Basin, Rappahannock River Basin, Roanoke and Yadkin Rivers Basin, Chowan River Basin (including the Dismal Swamp and Albemarle Sound), Tennessee River Basin, Big Sandy River Basin, Chesapeake Bay and its Small Coastal Basins, Atlantic Ocean, York River Basin, and New River Basin.

§ 33.2-248. Expenditure of funds for interstate bridges and approaches.

The Commissioner of Highways may expend from funds available for construction or maintenance of roads or highways, either alone or in cooperation with public road authorities of other states, such funds as he may deem necessary for the construction, maintenance, operation, and repair of interstate highway bridges, tunnels, and approaches forming connecting links between highways in the systems of state highways and public roads of other states.

§ 33.2-249. Maintenance and operation of bridges or tunnels on the city and state line.

The governing bodies of cities and towns having populations greater than 3,500 and the Commissioner of Highways may enter into agreements, upon such terms and conditions as may be necessary, for the maintenance of public highway bridges or tunnels lying partly within and partly outside the incorporated limits of such cities and towns.

The Commissioner of Highways may enter into agreements with other states and the District of Columbia, upon such terms and conditions as may be necessary, for the maintenance and operation, including the issuance of permits, of public highway bridges or tunnels lying partly within and partly outside the territorial limits of the Commonwealth.

§ 33.2-250. Improving certain private roads and certain town streets and roads.

A. The Commissioner of Highways may, upon the request of the governing body of any county and at the expense of the owner of the land, improve private roads giving direct access from the home or other central buildings on the property along the shortest practical route to the nearest public highway, provided that:

1. The Commissioner of Highways shall in no case undertake any such work until certification is made by the governing body of the county that the property owner cannot secure the services of a private contractor to perform the work nor then until the owner has deposited with him a certified check in the amount estimated by the Commissioner of Highways as the cost of the work;

2. Not more than $1,000 shall be expended on any one such private project in any one year; and

3. No work of ordinary maintenance shall be done on any such private road under the provisions of this section.

B. In addition, the Commissioner of Highways may, upon the request of the council of any town having a population of less than 1,500 and at the expense of such town, improve and maintain any streets or roads in such town and not in the primary state highway system. As to streets and roads in such town, no certification by the board of supervisors or deposit shall be necessary.

C. Any work done by the Commissioner of Highways pursuant to the provisions of this section shall only be done with the equipment and employees of the Department.

§ 33.2-251. Installation and maintenance of "children at play" signs in counties and towns.

The governing body of any county or town may enter into an agreement with the Commissioner of Highways allowing the county or town to install and maintain, at locations specified in such agreement, signs alerting motorists that children may be at play nearby. The cost of the signs and their installation shall be paid by the county or town.

The provisions of this section shall not apply to any county that has withdrawn its roads from the secondary state highway system under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 and has not elected to return.

§ 33.2-252. Tramways and railways along or across public highways; appeals.

A. Whenever any person, firm, or chartered company engaged in mining, manufacturing, or lumber getting has acquired the right-of-way for a tramway or railway, except across or upon a public highway, and desires to cross such highway or some part thereof and if such person, firm, or chartered company cannot agree with the Commissioner of Highways, or governing body of a county if the road is a county road in a county where the roads are not within the secondary state highway system, as to the terms and conditions of such crossing, the circuit court of the county in which such highway may be may prescribe such regulations for the crossing of such highway as will protect the public, and when such regulations have been prescribed, such tramway or railway may be constructed and maintained or if already constructed may be maintained in accordance with such regulations as may be made on the application of the owner of such tramway or railway or on the motion of the attorney for the Commonwealth after notice to such owner.

B. The Commissioner of Highways or governing body or the applicant or owner of the tramway or railway may appeal from the order of the circuit court in the manner prescribed for appeals in controversies concerning roads.

C. Nothing contained in this section shall be construed as giving the right to condemn private property for such tramway or railway, nor shall the rights of any tramway or railway lawfully acquired be affected.

§ 33.2-253. Highway safety corridor program.

The Commissioner of Highways shall establish a highway safety corridor program under which a portion of highways in the primary state highway system and Interstate System may be designated by the Commissioner of Highways as highway safety corridors to address highway safety problems through law enforcement, education, and safety enhancements. In consultation with the Department of Motor Vehicles and the Superintendent of State Police, the Commissioner of Highways shall establish criteria for the designation and evaluation of highway safety corridors, including a review of crash data, accident reports, type and volume of vehicle traffic, and engineering and traffic studies. The Commissioner of Highways shall hold a public hearing prior to the adoption of the criteria to be used for designating a highway safety corridor. The Commissioner of Highways shall hold a minimum of one public hearing before designating any specific highway corridor as a highway safety corridor. The public hearing or hearings for a specific corridor shall be held at least 30 days prior to the designation at a location as close to the proposed corridor as practical.

The Department of Transportation shall erect signs that designate highway safety corridors and the penalties for violations committed within the designated corridors.

§ 33.2-254. Erection and maintenance of newspaper route boxes.

The publishers of all newspapers having a circulation in rural sections of the Commonwealth may erect and maintain suitable newspaper route boxes along and on the rights-of-way of the public highways throughout such rural sections, in which to deposit newspapers for their subscribers. The short name of the newspaper to be deposited in each such box, but nothing more, may be plainly printed thereon. All such boxes shall be located so they do not interfere with or endanger public travel on highways. All such locations shall meet with the approval of the Commissioner of Highways.

§ 33.2-255. Sale or lease of properties acquired for highway construction.

To the extent not otherwise prohibited by law, the Commissioner of Highways may sell or otherwise dispose of any improvements on lands acquired for highway construction projects or lease such land and improvements until such time as the land is needed for immediate highway construction purposes. Any residue parcels of lands so acquired that are found to be unnecessary for highway purposes may be sold or otherwise disposed of by the Commissioner of Highways.

Article 4.

Department of Transportation.

§ 33.2-256. Department of Transportation established.

There is hereby created a Department of Transportation within the executive branch, which shall be under the supervision and management of the Commissioner of Highways and responsible to the Secretary of Transportation.

§ 33.2-257. Responsibilities of the Department of Transportation for analysis of transportation projects in the Northern Virginia Transportation District.

A. The Department of Transportation, in ongoing coordination with the Commonwealth Transportation Board, the Department of Rail and Public Transportation, and the Northern Virginia Transportation Authority, shall evaluate all significant transportation projects, including highway, mass transit, and technology projects, in and near the Northern Virginia Transportation District, to the extent that funds are available for such purpose. The evaluation shall provide an objective, quantitative rating for each project according to the degree to which the project is expected to reduce congestion and, to the extent feasible, the degree to which the project is expected to improve regional mobility in the event of a homeland security emergency. Such evaluation shall rely on analytical techniques and transportation modeling, including those that employ computer simulations currently and customarily employed in transportation planning. The Department of Transportation may rely on the results of transportation modeling performed by other entities, including the Northern Virginia Transportation Authority and private entities contracted for this purpose, provided that such modeling is in accordance with this section. The Department of Transportation shall publicize the quantitative ratings determined for each project on its website and complete the evaluation at least once every four years, with interim progress reports provided on the website at least once every six months starting January 1, 2013.

B. In determining the allocation of highway construction funding in the Northern Virginia Transportation District, the Board shall, in ongoing coordination with the Northern Virginia Transportation Authority, give priority to projects that most effectively reduce congestion in the most congested corridors and intersections. However, nothing in this section shall limit the ability of the Board to consider other criteria, including the performance-based criteria set forth in § 33.2-2508.

C. Nothing in this section shall be construed or implied to direct funding to the Northern Virginia Transportation District from another transportation district.

D. For purposes of this section, the significant transportation projects to be evaluated shall comprise at least 25 such projects selected according to priorities determined by the Board, in ongoing coordination with the Northern Virginia Transportation Authority, without regard to the funding source of the project, and may include:

1. Projects included in the version of the Financially Constrained Long-Range Transportation Plan of the National Capital Region Transportation Planning Board in effect when the evaluation is made, plus additional projects in the Northern Virginia Transportation Authority's TransAction 2030 Regional Transportation Plan and subsequent updates; and

2. Other highway, rail, bus, and technology projects that could make a significant impact on mobility in the region, including additional Potomac River crossings west and south of Washington, D.C.; extension of the Metro Orange Line, Metro Yellow Line, and Metro Blue Line; bus rapid transit on Interstate 66; vehicle capacity and mass transit improvements on the U.S. Route 1 corridor; and implementation of relevant portions of the Statewide Transportation Plan established pursuant to § 33.2-353.

§ 33.2-258. Environmental permits for highway projects; timely review.

Notwithstanding any other provision of state law or regulation, any state agency, board, or commission that issues a permit required for a highway construction project pursuant to Title 10.1, 28.2, 29.1, or 62.1 shall within 15 days of receipt of an individual permit application review the application for completeness and either accept the application or request additional specific information from the Department. Unless a shorter period is provided by law, regulation, or agreement, the state agency, board, or commission shall within 120 days of receipt of a complete application issue the permit, issue the permit with conditions, deny the permit, or decide whether a public meeting or hearing is required by law. If a public meeting or hearing is held, it shall be held within 45 days of the decision to conduct such a proceeding, and a final decision as to the permit shall be made within 90 days of completion of the public meeting or hearing. For coverage under general permits

issued pursuant to Title 10.1, 28.2, 29.1, or 62.1, the state agency, board, or commission that issues such permits shall within 10 business days of receipt of an application from the Department for or highway construction project review the application for completeness and either accept the application or request additional specific information from the Department. Coverage under the general permit shall be approved, approved with conditions, or denied within 30 business days of receipt of a complete application.

§ 33.2-259. Maintain drainage easements.

Whenever in connection with or as a precondition to the construction or reconstruction of any highway the Department has acquired any permanent drainage easement, the Department shall, until such time as such easement has been terminated, perform repairs required to protect the roadway and to ensure the proper function of the easement within the right-of-way and within the boundaries of such easement.

§ 33.2-260. Specifications in purchasing lubricating motor oil.

A. Standard specifications adopted for lubricating motor oil for competitive bidding contracts to be let by the Department shall be prescribed so as to include re-refined or recycled lubricating motor oil. Specifications adopted for circumstances or equipment that require specialized treatment or products may be excluded.

B. The Department shall compile and publish a list of business entities that commercially distribute re-refined or recycled lubricating motor oil that complies with the standard specifications adopted by the Department pursuant to the provisions of this section. The Department shall make the list available to local governing bodies upon request.

§ 33.2-261. Value engineering required in certain projects.

The Department shall employ value engineering in conjunction with any project on any highway system using criteria established by the Department, including all projects costing more than $5 million. For the purposes of this section, "value engineering" means a systematic process of review and analysis of an engineering project by a team of persons not originally involved in the project. Such team may offer suggestions that would improve project quality and reduce total project cost, ranging from a combination or elimination of inefficient or expensive parts or steps in the original proposal to total redesign of the project using different technologies, materials, or methods.

After a review, the Commissioner of Highways may waive the requirements of this section for any project for compelling reasons. Any such waiver shall be in writing, state the reasons for the waiver, and apply only to a single project.

§ 33.2-262. Removal of snow from driveways of volunteer fire departments and rescue squads.

On the roads under the jurisdiction of the Department, the Department shall remove snow from the driveways and entrances of volunteer fire departments and volunteer rescue squads when the chief of any individual volunteer fire department, or the head of any individual volunteer rescue squad, makes a written request for such snow removal service, provided that such service shall only be performed when such service can be performed during the normal course of snow removal activities of the Department without interfering with, or otherwise inconveniencing, such snow removal activities. Such service shall not extend to any parking lots adjacent to such driveways and entranceways not normally used by the volunteer fire department or volunteer rescue squad vehicles as their direct driveway or entrance.

§ 33.2-263. School bus stop signs or other indicators.

The Department shall allow any local school board to install signs or other devices to indicate school bus stops, provided the installation is approved by the Department prior to installation. No local school board shall be required to install signs at all school bus stops. Maintenance, repair, and replacement of school bus stop signs shall be the responsibility of the local school board. The Department, in conformance with the Department's current policies for emergency snow removal operations, shall use its best efforts to ensure that signed school bus stop areas shall not be obstructed by snow removal operations. Installation of school bus stop signs shall not designate the area as school property.

§ 33.2-264. Livestock on right-of-way of the systems of state highways.

No person, firm, or corporation shall pasture or graze, or cause to be pastured or grazed, or otherwise permit to be on any right-of-way of any highway in the systems of state highways, except as otherwise provided in this section, any livestock, unless such animal or animals be securely tied or held by chain or rope so as to prevent such animal from getting on the traveled portion of the highway, provided that this section

shall not apply when such livestock are being driven along such highway while under the control of a responsible drover or drovers.

Nothing in this section shall prevent the owners of abutting parcels of land from grazing livestock unsecured by chain or rope on secondary roads that (i) have been taken into the system as gated roads and (ii) carry fewer than 50 vehicles per day.

On gated roads carrying 50 or more vehicles per day, the Department shall, upon the request of the local governing body and upon the recordation of a deed of gift or donation by such landowner of not less than a 40-foot right-of-way, reimburse abutting landowners a sum equal to $1 per foot of fencing that must be installed to keep cattle from entering the right-of-way from such abutting land. Where such fencing separates pasture land from a water source used by the owner of such pasture land to water his livestock, the Department shall construct or have constructed a means of access by which stock may reach the water source from the pasture land. Moneys for such fencing and construction of access to water shall be taken from highway construction funds. For purposes of this section, a "gated" road is a road on which, prior to July 1, 1986, abutting landowners have maintained a gate or cattle guard.

Any person, firm, or corporation who violates any of the provisions of this article shall be fined not less than $10 nor more than $50 for such offense.

Nothing in this section shall be construed to transfer the liability for injuries or property damage caused by such grazing livestock.

§ 33.2-265. Comprehensive roadside management program.

The Department shall promulgate regulations for a comprehensive roadside management program. Such program shall include opportunities for participation by individuals, communities, and local governments and shall address items, including safety, landscape materials, services, funding, recognition, and appropriate signing.

§ 33.2-266. Intermittent closing of highways subject to flooding; permits; notice.

A. Upon application of the board of directors of any soil and water conservation district and of the board of supervisors of the county wherein the highway is located, the Department is authorized to permit the intermittent closing of any highway located within the boundaries of such district and county whenever in its judgment it is necessary to do so and when the highway will be intermittently subject to inundation by floodwaters retained by an approved watershed retention structure. All costs associated with such closing shall be borne by the board of supervisors of the county, including the costs of furnishing, erecting, and removing the necessary signs, barricades, signals, and lights to safeguard and direct traffic.

B. Before any permit may be issued for the temporary inundation and closing of such a highway, an application for such permit shall be made to the Department by the board of directors of the soil and water conservation district and the board of supervisors of the county wherein the highway is located. The application shall specify the highway involved and shall request that a permit be granted to the county to allow the intermittent closing of the highway.

C. Before making such application, the board of supervisors of the county wherein such highway is located shall give notice of the proposed action by publication once each week for two consecutive weeks in a newspaper of general circulation in the county, and such notice shall contain a description of the places of beginning and the places of ending of such intermittent closing. In addition to such publication, the board of supervisors of such county shall give notice to all public utilities having facilities located within the rights-of-way of any highway being closed by mailing a copy of such notice to the office of each such public utility located within the county, or if no office is located within the county, then to the office of such utility located nearest to the county. Furthermore, no such application shall be accepted by the Department that does not certify compliance by the applicants with the requirements of publication and notice in the manner prescribed in this section. All costs associated with the application procedure and notice to the public and to public utilities shall be borne by the board of supervisors of the county.

D. Not sooner than 30 days after the last publication and not sooner than 30 days after the mailing of such notice, the Department may issue the permit with respect to such highway. Nothing herein contained shall require the Department to issue such a permit when the Department, in its sole discretion, does not consider

such intermittent closing of highways to be in the best interest of fulfilling the Department's duties to the traveling public.

§ 33.2-267. Family restrooms.

The Department shall provide family restrooms at all rest areas along Interstate System highways in the Commonwealth. All such family restrooms shall be constructed in accordance with federal law. The provisions of this section shall apply only to rest stops constructed on or after July 1, 2003.

§ 33.2-268. Contractor performance bonds for locally administered transportation improvement projects.

Whenever any locality undertakes administration of a transportation improvement project and obtains, in connection therewith, contractor performance bonds that include the Department as a dual obligee, the amount of such bonds shall be no greater than would have been required had the Department not been included as a dual obligee. The surety's obligation to the Department shall be no greater than its obligation to the locality administering the project, and the amount of the bond is the limit of the surety's obligation to either or both obligees.

§ 33.2-269. Localities may use design-build contracts.

Localities may award contracts for the construction of transportation projects on a design-build basis. These contracts may be awarded after a written determination is made by the chief executive officer of the locality that delivery of the projects must be expedited and that it is not in the public interest to comply with the design and construction contracting procedures normally followed. These contracts shall be of such size and scope to encourage maximum competition and participation by qualified contractors. Such determination shall be retained for public inspection in the official records of the locality and shall include a description of the nature and scope of the project and the reasons for the determination that awarding a design-build contract will best serve the public interest. If state or federal transportation funds are used for the contract, then the locality shall comply with the provisions of §§ 33.2-209 and 33.2-214 and shall request from the Department the authority to administer the project in accordance with pertinent state or federal requirements.

§ 33.2-270. Provide for training of certain local employees.

The Department shall provide for the training and certification of local governments in order that such local governments are capable of administering local maintenance and construction projects that involve the secondary or urban highway system. Such training and certification shall enable such local governments to carry out locally administered projects in compliance with federal and state law and regulations with minimal oversight by Department personnel.

§ 33.2-271. Maintain property acquired for construction of transportation projects.

Subject to requirements of federal law or regulations and prior to the initiation of project construction, the Department shall mow the grass and remove weeds and debris on property acquired for the construction of a transportation project by the Department. Such activities shall be performed in accordance with the same schedules used for these activities on other rights-of-way maintained by the Department in the same locality. At the written request of the local governing body or a locality, the Department shall provide additional services on the property acquired for the construction of a transportation project, including removal of abandoned vehicles. Such additional services shall be funded from the construction allocations to the project.

§ 33.2-272. Location of landfill gas pipelines in highway right-of-way; Department of Transportation to provide notice to counties.

Whenever the Department grants its permission for the construction, installation, location, or placement of a landfill gas pipeline within any highway right-of-way, notice shall be provided by the Department to every county through which such pipeline or any portion thereof will pass.

For the purposes of this section, "landfill gas pipeline" means those facilities exempted from the definition of public utility in subdivisions (b) (6), (7), and (8) of § 56-265.1.

§ 33.2-273. Use of steel plates in connection with highway repairs.

Any person using steel plates in connection with a temporary or permanent repair to the roadway of any highway shall follow the standards of the Department regarding warnings thereof and the marking of such plates. The provisions of this section shall not apply to any portion of a roadway that is closed to vehicular traffic.

§ 33.2-274. Application and installation of traffic control measures.

Nothing in this title shall be construed to prevent the application and installation of traffic control measures to reduce the negative effects of traffic through residential areas on any component of the secondary highway system that meets the definition of "residence district" in § 46.2-100, even if such component also provides access to a "business district" as defined in the same section. Installation of traffic control measures on any state-maintained highway shall be approved by the Department prior to installation.

Furthermore, nothing in this title shall be construed to prevent the acceptance by the Department of private financing for the application and installation of traffic control measures if and when such measures meet the Department's standards.

§ 33.2-275. Periodic quantitative rating of certain highways.

The Department shall determine a quantitative rating on the pavement condition and ride quality of every highway in the primary and secondary state highway systems at least once every five years, using metrics generally accepted in the United States for this purpose. The Department shall post these ratings on its website, organized by transportation district, updated at least quarterly, with interpretive guidance, identifying each (i) primary and secondary highway or segment thereof that has been rated, the pavement condition and ride quality rating given, and the date it was last rated and (ii) primary or secondary highway or segment thereof that has not been rated and the approximate date, if available, that the rating is scheduled to be made.

§ 33.2-276. Noise abatement practices and technologies.

A. Whenever the Board or the Department plan for or undertake any highway construction or improvement project and such project includes or may include the requirement for the mitigation of traffic noise impacts, first consideration should be given to the use of noise reducing design and low noise pavement materials and techniques in lieu of construction of noise walls or sound barriers. Vegetative screening, such as the planting of appropriate conifers, in such a design would be utilized to act as a visual screen if visual screening is required.

B. The Department shall expedite the development of quiet pavement technology such that applicable contract solicitations for paving shall include specifications for quiet pavement technology and other sound mitigation alternatives in any case in which sound mitigation is a consideration. To that end, the Department shall construct demonstration projects sufficient in number and scope to assess applicable technologies. The assessment shall include evaluation of the functionality and public safety of these technologies in Virginia's climate and shall be evaluated over at least two full winters. The Department shall provide an initial interim report to the Governor and the General Assembly by June 30, 2012, a second interim report by June 30, 2013, and a final report by June 30, 2015. The report shall include results of demonstration projects in Virginia, results of the use of quiet pavement in other states, a plan for routine implementation of quiet pavement, and any safety, cost, or performance issues that have been identified by the demonstration projects.

C. The governing body of any locality, at its own expense, may evaluate noise from highways it may designate for analysis. Such evaluation shall be accepted and relied upon by the Department if such evaluation is prepared in accordance with and complies with applicable federal law, regulations, and requirements, as well as guidelines and policies issued by the Board, relating to noise abatement and evaluation. This provision shall not apply to projects for which the Department is required to perform a noise analysis.

§ 33.2-277. Sale of materials to, and use of equipment by, localities and school boards.

The Department may lend or rent equipment and sell materials and supplies used in the building or repairing of highways and streets to any locality or school board, upon such terms and conditions as may be agreed upon by the Department and such locality or school board, provided that the governing body of such locality or school board submits to the Department a certificate setting forth that the material or equipment cannot be furnished from private sources within a reasonable time. The requirement of such a certificate shall not apply to towns with a population of less than 3,500 inhabitants or to the purchase of paint for traffic marking purposes by any locality or school board.

§ 33.2-278. Facilities for persons desiring to fish from bridges.

The Department may, upon the request in writing of any department or agency of the Commonwealth, construct and maintain on or in connection with any bridges that now constitute a part of any system of state

highways platforms, walkways, or other facilities as may be necessary or proper for the safety and convenience of persons who desire to fish therefrom. The cost shall be paid out of funds furnished by the department or agency making the request from its own funds or funds furnished to such department or agency by gift from private sources. The Department shall not be held responsible for damage caused by the construction or use of such facilities.

§ 33.2-279. Use of streams and lowlands obstructed by newly constructed highways as fishponds or water storage areas.

Whenever any highway is being constructed and the highway is to pass over any stream or lowland the obstruction of which is necessary to such construction or if the present highway construction can be utilized to provide a suitable dam for a fishpond or water storage area, then upon application of the adjacent property owner requesting that it be so used, the Department may permit such use, provided that such dam shall be subject to the provisions of §§ 33.2-409 through 33.2-414 and any additional cost incurred shall be borne by the requesting property owner.

§ 33.2-280. Treatment of highway surfaces for dust control.

The Department may treat highway surfaces for stabilization and dust control in any town in the Commonwealth upon request of the governing body of such town and may treat highway surfaces for stabilization and dust control in any county of the Commonwealth, the secondary highways within which are not a part of the secondary state highway system, upon request of the governing body thereof, provided that such county or town governing body shall pay to the Department the cost of such treatment. This section applies to any highway that is a part of the primary or secondary state highway system.

Article 5.

Department of Rail and Public Transportation.

§ 33.2-281. Policy.

The General Assembly finds that there is a compelling public need to provide a balanced multimodal transportation system that enhances the service capabilities of passenger and freight rail, public transportation, highways, aviation, and ports and that it is in the public interest to ensure that passenger and freight rail and public transportation are full participants in that multimodal system to reduce energy consumption, congestion, and air pollution; to enhance the environment; to support economic development; and to ensure the efficient movement of goods and people. Accordingly, the General Assembly finds that this chapter is necessary for the public convenience, safety, and welfare.

§ 33.2-282. Department of Rail and Public Transportation created; appointment of Director.

There is hereby created a Department of Rail and Public Transportation reporting to the Secretary of Transportation and subject to the policy oversight of the Commonwealth Transportation Board. The Department of Rail and Public Transportation shall be headed by a Director who shall be appointed by and serve at the pleasure of the Governor. The Director of the Department of Rail and Public Transportation shall serve as a nonvoting ex officio member of the Board and any committee of the Board dealing with passenger and freight rail, transportation demand management, ridesharing, and public transportation issues.

§ 33.2-283. Powers and duties of the Director of the Department of Rail and Public Transportation.

Except such powers as are conferred by law upon the Board, or such services as are performed by the Department of Transportation pursuant to law, the Director of the Department of Rail and Public Transportation shall have the power to do all acts necessary or convenient for establishing, maintaining, improving, and promoting public transportation, transportation demand management, ridesharing, and passenger and freight rail transportation in the Commonwealth and to procure architectural and engineering services for rail and public transportation projects as specified in § 2.2-4302.2.

§ 33.2-284. General powers of the Department of Rail and Public Transportation.

The Department of Rail and Public Transportation has the following general powers:

1. To accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department of Rail and Public Transportation has the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable;

2. To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including contracts with the United States

government, other states, agencies and governmental subdivisions of Virginia, and other appropriate public and private entities;

3. To assist other appropriate entities, public or private, in the implementation and improvement of passenger and freight rail, transportation demand management, ridesharing, and public transportation services and the retention of rail corridors for public purposes;

4. To represent and promote the Commonwealth's interests in passenger and freight rail, transportation demand management, ridesharing, and public transportation; and

5. To acquire and hold title to the land necessary to construct railway lines in order to reduce traffic congestion on highways and shift traffic to rail transportation and acquire by any means whatsoever, lease, improve, and construct railway lines, passenger and freight rail, transportation demand management, ridesharing, and public transportation facilities, and passenger and freight rail, transportation demand management, ridesharing, and public transportation equipment determined to be for the common good of the Commonwealth or a region of the Commonwealth and assist other appropriate entities in the implementation and improvement of passenger and freight rail, transportation demand management, ridesharing, and public transportation services and the retention of rail corridors for public purposes.

§ 33.2-285. Responsibilities of Department of Rail and Public Transportation.

The Department of Rail and Public Transportation has the responsibility to:

1. Determine present and future needs for, and economic feasibility of providing, public transportation, transportation demand management, and ridesharing facilities and services and the retention, improvement, and addition of passenger and freight rail transportation in the Commonwealth;

2. Formulate and implement plans and programs for the establishment, improvement, development and coordination of public transportation, transportation demand management, and ridesharing facilities and services, and the development, retention, and improvement of passenger and freight rail transportation services and corridors in the Commonwealth, including lines for higher speed passenger rail that will shift traffic from the highways to passenger rail and thereby reduce traffic congestion, and coordinate transportation demand management and innovative technological transportation initiatives with the Department of Transportation;

3. Coordinate with the Department of Transportation in the conduct of research, policy analysis, and planning for the rail and public transportation modes as may be appropriate to alleviate traffic congestion on highways by shifting traffic to passenger rail and to ensure the provision of effective, safe, and efficient public transportation and passenger and freight rail services in the Commonwealth;

4. Develop uniform financial and operating data on and criteria for evaluating all public transportation activities in the Commonwealth, develop specific methodologies for the collection of such data by public transit operators, regularly and systematically verify such data by means of financial audits and periodic field reviews of operating data collection methodologies, and develop such other information as may be required to evaluate the performance and improve the economy or efficiency of public transit or passenger and freight rail operations, transportation demand management programs, and ridesharing in the Commonwealth;

5. Compile and maintain an up-to-date inventory of all abandoned railroad corridors in the Commonwealth abandoned after January 1, 1970;

6. Provide training and other technical support services to transportation operators and ridesharing coordinators as may be appropriate to improve public transportation, ridesharing, and passenger and freight rail services;

7. Maintain liaison with state, local, district, and federal agencies or other entities, private and public, having responsibilities for passenger and freight rail, transportation demand management, ridesharing, and public transportation programs;

8. Receive, administer, and allocate all planning, operating, capital, and any other grant programs from the Federal Transit Administration, the Federal Railroad Administration, the Federal Highway Administration, and other agencies of the United States government for public transportation, passenger and freight rail transportation, transportation demand management, and ridesharing purposes with approval of the Board and to comply with all conditions attendant thereto;

9. Administer all state grants for public transportation, rail transportation, ridesharing, and transportation demand management purposes with approval of the Board;

10. Promote the use of public transportation, transportation demand management, ridesharing, and passenger and freight rail services to improve the mobility of Virginia's citizens and the transportation of goods;

11. Represent the Commonwealth on local, regional, and national agencies, industry associations, committees, task forces, and other entities, public and private, having responsibility for passenger and freight rail, transportation demand management, ridesharing, and public transportation;

12. Represent the Commonwealth's interests in passenger and freight rail, transportation demand management, ridesharing, and public transportation and coordinate with the Department of Transportation in the planning, location, design, construction, implementation, monitoring, evaluation, purchase, and rehabilitation of facilities and services that affect or are used by passenger and freight rail, transportation demand management, ridesharing, or public transportation;

13. Coordinate with the State Corporation Commission on all matters dealing with rail safety inspections and rail regulations that fall within its purview;

14. Prepare and review state legislation and Commonwealth recommendations on federal legislation and regulations as directed by the Secretary of Transportation;

15. Promote public transportation, ridesharing, and passenger and freight rail safety; and

16. Ensure the safety of rail fixed guideway transit systems within the Commonwealth and carry out state safety and security oversight responsibilities for rail fixed guideway transit systems as required by the Federal Transit Administration and federal law. For any rail fixed guideway transit system operated within the Commonwealth pursuant to an interstate compact, the Department of Rail and Public Transportation shall perform its oversight responsibilities in accordance with the interstate compact governing the operation of such system and any applicable federal law.

SUBTITLE II.

MODES OF TRANSPORTATION: HIGHWAYS, BRIDGES, FERRIES, RAIL, AND PUBLIC TRANSPORTATION.

CHAPTER 3.

HIGHWAY SYSTEMS.

Article 1.

Interstate System.

§ 33.2-300. Power and authority of Commonwealth Transportation Board relating to the Interstate System, generally.

The Board may plan, designate, acquire, open, construct, reconstruct, improve, maintain, discontinue, abandon, and regulate the use of the Interstate System in the same manner in which it is now or may be authorized to plan, designate, acquire, open, construct, reconstruct, improve, maintain, discontinue, abandon, and regulate the use of the primary state highway system. The Board may vacate, close, or change the location of any highway or street in the manner in which it is now authorized by law to vacate, close, or change the location of a highway in the primary state highway system. The Board has any and all other authority and power relative to the Interstate System as is vested in it relative to highways in the primary state highway system, including the right to acquire by purchase, eminent domain, grant, or dedication title to lands or rights-of-way for such interstate highways whether within or without the limits of any city or town, and in addition thereto has such other power, control, and jurisdiction necessary to comply with the provisions of the Federal-Aid Highway Act of 1956 and all acts amendatory or supplementary thereto, all other provisions of law to the contrary notwithstanding.

§ 33.2-301. Contracts for maintenance of components of Interstate System.

All maintenance on components of the Interstate System, excluding frontage roads, shall be carried out under contracts awarded by the Commissioner of Highways or the Board pursuant to §§ 33.2-209, 33.2-214, and 33.2-221, except for instances where good and sufficient reasons for not doing so have been shown in advance in writing by the Commissioner of Highways to the Board and to the Chairmen of the House Committee on Transportation, the House Committee on Appropriations, the House Committee on Finance, the

Senate Committee on Transportation, and the Senate Committee on Finance. Nothing in this section shall be construed to prevent the Department from performing emergency work at any time on the Interstate System with its own employees or agents or to assume the maintenance responsibilities of a contractor who has been determined to be in default or as a result of a contract termination.

§ 33.2-302. Funds for establishment and maintenance of Interstate System, generally.

The highways embraced within the Interstate System shall be established, constructed, and maintained by the Commonwealth under the direction and supervision of the Commissioner of Highways with state funds as may be appropriated and made available for such purposes, together with such appropriations as may be made by any locality in the Commonwealth and funds as are now available or that may be derived from the federal government for such purposes. State funds for repayment of federal construction advances may be raised by toll facilities, if approved by the Federal Highway Administration.

§ 33.2-303. Portions of Interstate System within cities and towns.

Whenever any portion of the Interstate System that is to be constructed within cities or towns is to occupy existing streets, the right-of-way in the street shall be occupied by the Interstate System free of cost to the Commonwealth.

When the Interstate System extending into or through cities or towns has been constructed to the required standards, streets or highways occupied thereby shall cease to be maintained and controlled by the governing bodies of such cities or towns, and such cities and towns shall thereafter be relieved from all civil liability arising from the physical condition of such streets or highways. Such streets and highways shall not be considered as mileage for which the Board is required to make payment to such cities or towns by any other provision of law.

Nothing contained in this article shall relieve the cities or towns through which any portion of the Interstate System is projected from the responsibility for the preservation of public peace, prevention of crime, apprehension of criminals, protection of the rights of persons and property, and enforcement of the laws of the Commonwealth, and the regulations enacted pursuant thereto, nor shall anything contained herein be considered as a waiver by the Commonwealth of its immunity from liability for tort.

§ 33.2-304. Transfer of highways, bridges, and streets from the secondary and primary state highway systems to Interstate System.

The Board may transfer such highways, bridges, and streets as it deems proper from the primary or secondary state highway system to the Interstate System. Upon such transfer, the highways, bridges, and streets so transferred shall become for all purposes parts of the Interstate System and thereafter cease being parts of the primary or secondary state highway system. The Board may add such highways, bridges, and streets as it deems proper to the Interstate System without limitations as to mileage.

§ 33.2-305. Transfer of highways, bridges, and streets from Interstate System to primary or secondary state highway system.

The Board may transfer such highways, bridges, and streets as it deems proper from the Interstate System to the primary or secondary state highway system without limitations as to mileage. Upon such transfer, the highways, bridges, and streets so transferred shall become for all purposes parts of the primary or secondary state highway system and thereafter cease being parts of the Interstate System.

§ 33.2-306. Applicability of §§ 33.2-300 through 33.2-305 to toll projects.

The provisions of §§ 33.2-300 through 33.2-305 shall not become effective with respect to those segments of the Interstate System constructed and financed as toll projects until the revenue bonds and the interest thereon issued on account of such toll projects have been paid or a sufficient amount for the payment of all such bonds and the interest to maturity thereon has been set aside in trust for the benefit of the respective bondholders. When the bonds and interest thereon, outstanding on account of such projects, have been paid or a sufficient amount for the payment of such bonds and the interest thereon to the maturity thereof has been so set aside in trust, and when the Board has by formal action, recorded in its minutes, determined the existence of such fact, then the provisions of §§ 33.2-300 through 33.2-308 shall fully apply to such projects.

§ 33.2-307. Relocation or removal of utility facilities within projects on Interstate System.

A. For the purposes of this section:

"Cost of highway construction" includes the cost of relocating or removing utility facilities in connection with any project on the Interstate System within cities or towns.

"Cost of relocation or removal" includes the entire amount paid by such utility properly attributable to such relocation or removal after deducting any increase in the value of the new facility and any salvage value derived from the old facility.

"Facility of a utility" includes tracks, pipes, mains, conduits, cables, wires, towers, and other structures, equipment, and appliances.

"Utility" includes publicly, privately, and cooperatively owned utilities.

B. Whenever the Board determines that it is necessary that any facility of a utility in, on, under, over, or along existing streets that are to be included within any project on the Interstate System within cities or towns should be relocated or removed, the owner or operator of such facility shall relocate or remove the same in accordance with the order of the Board. The cost of such relocation or removal, including the cost of installing such facility in a new location, and the cost of any lands, or any rights or interest in lands, and any other rights required to accomplish such relocation or removal shall be ascertained and paid by the Board as a part of the cost of the project.

§ 33.2-308. Additional provisions on relocation or removal of utility facilities within projects on Interstate System.

A. For the purposes of this section:

"Cost of highway construction" includes the cost of relocating or removing utility facilities in connection with any project on the Interstate System or primary state highway system within counties.

"Cost of relocation or removal" includes the entire amount paid by such utility properly attributable to such relocation or removal after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.

"Facility of a utility" includes pipes, mains, storm sewers, water lines, sanitary sewers, natural gas facilities, or other structures, equipment, and appliances.

B. Whenever the Board determines that it is necessary to relocate or remove any facility of a utility owned by (i) a county, (ii) a political subdivision of the Commonwealth or county, or (iii) a nonprofit, consumer-owned company, located in a county having a population of at least 32,000 but no more than 34,000, that (a) is exempt from income taxation under § 501(c)(3) of the Internal Revenue Code, (b) is organized to provide suitable drinking water, (c) has no assistance from investors, (d) does not pay dividends, and (e) does not sell stock to the general public, or storm sewers, water lines, natural gas facilities, or sanitary sewers owned by a city and extending into any county in, on, under, over, or along existing highways that are to be included within any project on the Interstate System or the primary state highway system within any county, the county or political subdivision of the Commonwealth or county, consumer-owned company, or city shall relocate or remove the same in accordance with the order of the Board. The cost of such relocation or removal including the cost of installing such facility in a new location, and the cost of any lands, or any rights or interest in lands, and any other rights required to accomplish such relocation or removal shall be ascertained and paid by the Board as a part of the cost of the project.

§ 33.2-309. Tolls for use of Interstate System components.

A. Notwithstanding any contrary provision of this title and in accordance with all applicable federal and state statutes and requirements, the Board may impose and collect tolls from all classes of vehicles in amounts established by the Board for the use of any component of the Interstate System within the Commonwealth. However, prior approval of the General Assembly shall be required prior to the imposition and collection of any toll for use of all or any portion of Interstate Route 81. Such funds so collected shall be deposited into the Transportation Trust Fund established pursuant to § 33.2-1524, subject to allocation by the Board as provided in this section.

B. The toll facilities authorized by this section shall be subject to the provisions of federal law for the purpose of tolling motor vehicles to finance interstate construction and reconstruction, promote efficiency in the use of highways, reduce traffic congestion, and improve air quality and for such other purposes as may be permitted by federal law.

C. In order to mitigate traffic congestion in the vicinity of the toll facilities, no toll facility shall be operated without high-speed automated toll collection technology designed to allow motorists to travel through the toll facilities without stopping to make payments. Nothing in this subsection shall be construed to prohibit a toll facility from retaining means of nonautomated toll collection in some lanes of the facility. The Board shall also consider traffic congestion and mitigation thereof and the impact on local traffic movement as factors in determining the location of the toll facilities authorized pursuant to this section.

D. The revenues collected from each toll facility established pursuant to this section shall be deposited into segregated subaccounts in the Transportation Trust Fund and may be allocated by the Board as the Board deems appropriate to:

1. Pay or finance all or part of the costs of programs or projects, including the costs of planning, operation, maintenance, and improvements incurred in connection with the toll facility, provided that such allocations shall be limited to programs and projects that are reasonably related to or benefit the users of the toll facility. The priorities of metropolitan planning organizations, planning district commissions, local governments, and transportation corridors shall be considered by the Board in making project allocations from such revenues deposited into the Transportation Trust Fund.

2. Repay funds from the Toll Facilities Revolving Account or the Transportation Partnership Opportunity Fund.

3. Pay the Board's reasonable costs and expenses incurred in the administration and management of the toll facility.

Article 2.

Primary State Highway System.

§ 33.2-310. Primary state highway system.

The primary state highway system shall be constructed and maintained by the Commonwealth under the direction and supervision of the Board and the Commissioner of Highways.

§ 33.2-311. Certain highways in parks included in primary state highway system.

All highways in state parks that provide connections between highways, in either the primary or secondary state highway system, outside such parks and recreation centers within such parks shall continue to be portions of the primary state highway system.

§ 33.2-312. Maintenance of highways, bridges, and toll facilities within state parks.

The Commissioner of Highways may maintain all highways, bridges, and toll facilities within the boundaries of any state park established by and under the control of the Department of Conservation and Recreation. For the purpose of maintaining the highways in any such park, the Commissioner of Highways may expend funds under his control and available for expenditures upon the maintenance of highways in the secondary state highway system in the county or counties in which such state park is located. This section shall not affect the jurisdiction, control, and right to establish such highways, bridges, and toll facilities that are now vested in the Department of Conservation and Recreation.

All roads, bridges, and toll facilities constructed by way of revenue bonds issued by the Department of Conservation and Recreation shall operate under the terms of their establishment as a park facility, notwithstanding the right of the Commissioner of Highways to use highway funds to maintain them.

§ 33.2-313. Maintenance of highways at state institutions.

The Commissioner of Highways may, when requested by the governing body of a state institution, assume the maintenance of any highway within the grounds of such state institution that has been established and constructed by such institution to standards acceptable to the Commissioner of Highways. Any such highways accepted for maintenance by the Commissioner of Highways under the provisions of this section shall be a part of the primary state highway system, but the state institution shall continue to exercise police power over such highways.

§ 33.2-314. Transfer of highways, bridges, and streets from secondary to primary state highway system; additions to primary state highway system.

A. The Board may transfer such highways, bridges, and streets as it deems proper from the secondary state highway system to the primary state highway system. Upon such transfer, the highways, bridges, and streets so transferred shall become for all purposes parts of the primary state highway system. The Board may

add such highways, bridges, and streets as it deems proper to the primary state highway system. The total mileage of such highways, bridges, and streets so transferred or added by the Board shall not exceed 50 miles during any one year.

B. When the Chief Engineer of the Department recommends that it is appropriate in connection with the completion of a construction or maintenance project to transfer highways, bridges, and streets from the secondary state highway system to the primary state highway system, the Commissioner of Highways may transfer such highways, bridges, and streets as he deems proper. Upon such transfer, the highways, bridges, and streets so transferred shall become for all purposes parts of the primary state highway system and cease being parts of the secondary state highway system.

§ 33.2-315. Transfer of highways, bridges, and streets from primary to secondary state highway system.

A. The Board may transfer such highways, bridges, and streets as it deems proper from the primary state highway system to the secondary state highway system or, if requested by the local governing body, to the local system of roads operated by a locality receiving payments pursuant to § 33.2-319 or 33.2-366. Upon such transfer, the highways, bridges, and streets so transferred shall become for all purposes parts of the secondary state highway system or the local system of roads operated by a locality receiving payments pursuant to § 33.2-319 or 33.2-366. The total mileage of such highways, bridges, and streets so transferred by the Board shall not exceed 150 miles during any one year.

B. When the Chief Engineer of the Department recommends that it is appropriate in connection with the completion of a construction or maintenance project to transfer highways, bridges, and streets from the primary state highway system to the secondary state highway system, the Commissioner of Highways may transfer such highways, bridges, and streets as he deems proper. Upon such transfer, the highways, bridges, and streets so transferred shall become for all purposes parts of the secondary state highway system and cease being parts of the primary state highway system.

§ 33.2-316. Primary state highway system map.

The Commissioner of Highways shall prepare and keep on file in his office for public inspection a complete map showing the routes of the primary state highway system.

§ 33.2-317. Establishment, construction, and maintenance exclusively by Commonwealth; funds.

The highways embraced within the primary state highway system shall be established, constructed, and maintained exclusively by the Commonwealth under the direction and supervision of the Commissioner of Highways, with such state funds as may be appropriated and made available for such purposes, together with such appropriations as may be made by any county, district, city, or town in the Commonwealth and such funds as are available or derived from the federal government for highway building and improvement in the Commonwealth.

§ 33.2-318. Bypasses through or around cities and towns.

A. The Commissioner of Highways may acquire by gift, purchase, exchange, condemnation, or otherwise such lands or interest therein necessary or proper for the purpose and may construct and improve thereon such bypasses or extensions and connections of the primary state highway system through or around cities and towns as the Board deems necessary for the uses of the primary state highway system, provided that the respective cities and towns with populations of 3,500 or more by action of their governing bodies agree to participate in accordance with the provisions of § 33.2-348 in all costs of such construction and improvement, including the cost of rights-of-way, on that portion of any such bypass or extension that is located within any such city or town. The maintenance of that portion of a bypass or extension located within a city or town shall be borne by the city or town. However, the Board shall contribute to such maintenance in accordance with the provisions of law governing its contribution to the maintenance of highways, bridges, and streets in such cities and towns. The location, form, and character of informational, regulatory, and warning signs, curb and pavement, or other markings and traffic signals installed or placed by any public authority shall be subject to the approval of the Commissioner of Highways. At both ends of bypasses through or around cities and towns, the Commissioner of Highways shall erect and maintain adequate directional signs of sufficient size and suitable design to indicate clearly the main route leading directly into such cities and towns.

B. Notwithstanding the provisions of subsection A, in any case in which a municipality refuses to contribute to the construction of a bypass or an extension or connection of the primary state highway system

within said municipality, the Commissioner of Highways may construct such bypass or extension and connection without any contribution by the municipality when the Board determines that such bypass or extension and connection is primarily rural in character and that the most desirable and economical location is within the municipality. Any bypass or extension and connection built under this subsection shall be maintained by the Commissioner of Highways as a part of the primary state highway system, and the municipality shall receive no payment for such bypass or extension and connection under § 33.2-319.

C. All the provisions of general law relating to the exercise of eminent domain by the Commissioner of Highways are applicable to such bypasses, extensions, and connections of the primary state highway system.

D. The Board may expend out of funds appropriated to the Board under subsection B and subdivision C 1 of § 33.2-358 such funds as may be necessary to carry out the provisions of this section.

§ 33.2-319. Payments to cities and certain towns for maintenance of certain highways.

The Commissioner of Highways, subject to the approval of the Board, shall make payments for maintenance, construction, or reconstruction of highways to all cities and towns eligible for allocation of construction funds for urban highways under § 33.2-362. Such payments, however, shall only be made if those highways functionally classified as principal and minor arterial roads are maintained to a standard satisfactory to the Department. Whenever any city or town qualifies under this section for allocation of funds, such qualification shall continue to apply to such city or town regardless of any subsequent change in population and shall cease to apply only when so specifically provided by an act of the General Assembly. All allocations made prior to July 1, 2001, to cities and towns meeting the criteria of the foregoing provisions of this section are hereby confirmed.

No payments shall be made to any such city or town unless the portion of the highway for which such payment is made either (i) has (a) an unrestricted right-of-way at least 50 feet wide and (b) a hard-surface width of at least 30 feet; (ii) has (a) an unrestricted right-of-way at least 80 feet wide, (b) a hard-surface width of at least 24 feet, and (c) approved engineering plans for the ultimate construction of an additional hard-surface width of at least 24 feet within the same right-of-way; (iii) (a) is a cul-de-sac, (b) has an unrestricted right-of-way at least 40 feet wide, and (c) has a turnaround that meets applicable standards set by the Department; (iv) either (a) has been paved and has constituted part of the primary or secondary state highway system prior to annexation or incorporation or (b) has constituted part of the secondary state highway system prior to annexation or incorporation and is paved to a minimum width of 16 feet subsequent to such annexation or incorporation and with the further exception of streets or portions thereof that have previously been maintained under the provisions of § 33.2-339 or 33.2-340; (v) was eligible for and receiving such payments under the laws of the Commonwealth in effect on June 30, 1985; (vi) is a street established prior to July 1, 1950, that has an unrestricted right-of-way width of not less than 30 feet and a hard-surface width of not less than 16 feet; (vii) is a street functionally classified as a local street that was constructed on or after January 1, 1996, and that at the time of approval by the city or town met the criteria for pavement width and right-of-way of the then-current design standards for subdivision streets as set forth in regulations adopted by the Board; (viii) is a street previously eligible to receive street payments that is located in the City of Norfolk or the City of Richmond and is closed to public travel, pursuant to legislation enacted by the governing body of the locality in which it is located, for public safety reasons, within the boundaries of a publicly funded housing development owned and operated by the local housing authority; or (ix) is a local street, otherwise eligible, containing one or more physical protuberances placed within the right-of-way for the purpose of controlling the speed of traffic.

However, the Commissioner of Highways may waive the requirements as to hard-surface pavement or right-of-way width for highways where the width modification is at the request of the governing body of the locality and is to protect the quality of the affected locality's drinking water supply or, for highways constructed on or after July 1, 1994, to accommodate some other special circumstance where such action would not compromise the health, safety, or welfare of the public. The modification is subject to such conditions as the Commissioner of Highways may prescribe.

For the purpose of calculating allocations and making payments under this section, the Department shall divide affected highways into two categories, which shall be distinct from but based on functional classifications established by the Federal Highway Administration: (1) principal and minor arterial roads and

(2) collector roads and local streets. Payments made to affected localities shall be based on the number of moving-lane-miles of highways or portions thereof available to peak-hour traffic in that locality.

The Department shall recommend to the Board an annual rate per category to be computed using the base rate of growth planned for the Department's Highway Maintenance and Operations program. The Board shall establish the annual rates of such payments as part of its allocation for such purpose, and the Department shall use those rates to calculate and put into effect annual changes in each qualifying city's or town's payment under this section.

The payments by the Department shall be paid in equal sums in each quarter of the fiscal year, and payments shall not exceed the allocation of the Board.

The chief administrative officer of the city or town receiving this fund shall make annual categorical reports of expenditures to the Department, in such form as the Board shall prescribe, accounting for all expenditures, certifying that none of the money received has been expended for other than maintenance, construction, or reconstruction of the streets, and reporting on their performance as specified in subsection B of § 33.2-352. Such reports shall be included in the scope of the annual audit of each municipality conducted by independent certified public accountants.

§ 33.2-320. Incorporation into primary state highway system of connecting streets and highways in certain other cities and towns.

The Board may, by and with the consent of the Governor and the governing body of any city or town having a population of 3,500 or less, incorporate in the primary state highway system such streets and highways or portions thereof in such city or town as may in its judgment be best for the handling of traffic through such city or town from or to any highway in the primary state highway system and may eliminate any of such streets or highways or portions thereof from the primary state highway system. Every such action of the Board incorporating any such street or highway or portion thereof in the primary state highway system or eliminating it therefrom shall be recorded in its minutes.

Any such street or highway or portion thereof in any such city or town so incorporated in the primary state highway system shall be subject to the rules, regulations, and control of the state highway authorities as are other highways in the primary state highway system. But such city or town shall be obligated to pay the maintenance, construction, and reconstruction costs of such streets or highways or portions thereof so incorporated in the primary state highway system in excess of the amounts authorized to be spent by the Commissioner of Highways on such streets or highways.

Every provision in the charter of any such city or town insofar as it is in conflict with this section is hereby repealed.

The Commissioner of Highways may permit such city or town to maintain any such street or highway or portion thereof incorporated in the primary state highway system and may reimburse such city or town up to such amount as he is authorized to expend on the maintenance of such street or highway or portion thereof.

§ 33.2-321. Agreements between Commonwealth Transportation Board and certain counties for operation of certain devices on state highways.

The Commissioner of Highways is empowered to enter into agreements with the governing bodies of Arlington and Henrico Counties, upon such terms as may be agreeable between the parties, in order to authorize such counties to install, maintain, and control traffic signals, parking meters, lane-use control signals, and other traffic control devices at specific locations on the primary or secondary state highway system within such counties. Such counties and the Commissioner of Highways shall have the authority to do all things reasonable or convenient to effectuate the purposes of this section.

§ 33.2-322. Counties may perform certain maintenance.

Any county may enter into an agreement with the Department to permit the county to landscape and maintain any or all medians and other nontraveled portions of primary highways located in the county.

§ 33.2-323. Approval of markings and traffic lights erected by towns.

Notwithstanding any provision of law contrary to this section, all markings and traffic lights installed or erected by towns on the primary highways maintained by the Department shall first be approved by the Commissioner of Highways.

Article 3.

Secondary State Highway System.

§ 33.2-324. Secondary state highway system; composition.

The secondary state highway system shall consist of all of the public highways, causeways, bridges, landings, and wharves in the counties of the Commonwealth not included in the primary state highway system. The secondary state highway system shall include such highways and community roads leading to and from public school buildings, streets, causeways, bridges, landings, and wharves in towns having a population of 3,500 or less according to the United States census of 1920, and in all towns having such a population incorporated since 1920, that constitute connecting links between highways in the secondary state highway system in the counties and between highways in the secondary state highway system and highways in the primary state highway system, not to exceed two miles in any one town. If in any such town that is partly surrounded by water less than two miles of the highways and streets therein constitute parts of the secondary state highway system, the Board shall, upon the adoption of a resolution by the governing body of such town designating for inclusion in the secondary state highway system certain highways and streets in such town not to exceed a distance of two miles, less the length of such highways and streets in such town that constitute parts of the secondary state highway system, accept and place in the secondary state highway system such additional highways and streets.

§ 33.2-325. Certain school roads in secondary state highway system.

All roads leading from the state highways, either primary or secondary, to public schools in the counties of the Commonwealth to which school buses are operated shall continue to constitute portions of the secondary state highway system insofar as these roads lead to or are on school property and as such shall be improved and maintained.

§ 33.2-326. Control, supervision, and management of secondary state highway system components.

A. The control, supervision, management, and jurisdiction over the secondary state highway system shall be vested in the Department, and the maintenance and improvement, including construction and reconstruction, of such secondary state highway system shall be by the Commonwealth under the supervision of the Commissioner of Highways. The boards of supervisors or other governing bodies of the counties shall have no control, supervision, management, or jurisdiction over such public highways, causeways, bridges, landings, and wharves constituting the secondary state highway system. Except as otherwise provided in this article, the Board shall be vested with the same powers, control, and jurisdiction over the secondary state highway system in the counties and towns of the Commonwealth, and such additions as may be made, as were vested in the boards of supervisors or other governing bodies of the counties on June 21, 1932, and in addition thereto shall be vested with the same power, authority, and control as to the secondary state highway system as is vested in the Board in connection with the primary state highway system.

B. Nothing in this chapter shall be construed as requiring the Department, when undertaking improvements to any secondary state highway system component or any portion of any such component, to fully reconstruct such component or portion thereof to bring it into compliance with all design and engineering standards that would be applicable to such component or portion thereof if the project involved new construction.

§ 33.2-327. Design standards for secondary state highway system components.

For urban and urban development areas in localities using the urban county executive form of government, the Department shall work in conjunction with the locality and the Department of Rail and Public Transportation to review new design standards for secondary state highway system components that the locality proposes. Such standards shall (i) be based on the American Association of State Highway and Transportation Officials (AASHTO) A Policy on Geometric Design of Highways and Streets and other publications applicable to urban areas; (ii) set forth a design methodology that should be used in the affected urban and urban development areas; (iii) allow for the efficient movement of transit and other vehicles through these areas; (iv) accommodate safe pedestrian and bicyclist movement; (v) accommodate high density urban development; (vi) encourage user-friendly access to transit; (vii) include stormwater management guidelines, consistent with state and local laws and regulations; and (viii) respect the character of urban areas. These design standards and methodologies are intended to facilitate approval of roadway and transportation system improvement plans in urban areas that comply with the standards. These design

standards shall not contradict or be in conflict with the principles outlined in the applicable Board regulations concerning terms and conditions under which subdivision streets may be accepted into the secondary state highway system.

Standards developed by parties as required by this section shall be submitted to the Department for final review and approval at least three months prior to the locality's anticipated implementation date.

§ 33.2-328. Department of Transportation to install and maintain certain signs.

Whenever so requested by the governing body of a county, the Department shall install a system of highway name signs on state-maintained highways at such time and upon such terms and conditions as may be mutually agreed to between the county and the Commissioner of Highways.

The Department shall install, using state forces or contract, the initial signing system, and the county shall be responsible for continuing maintenance of the signs. Supply of the signs by the Department, either by manufacture or purchase, and initial installation shall be paid for from appropriate secondary construction funds allocated to the county or from primary construction funds available to the Department.

No highway funds shall be used by the county for the cost of maintaining the signing system.

§ 33.2-329. Transfer of control, etc., of landings, docks, and wharves to Department of Game and Inland Fisheries.

A. Notwithstanding any other provision of law, the Board may transfer the control, possession, supervision, management, and jurisdiction of landings, wharves, and docks in the secondary state highway system to the Department of Game and Inland Fisheries, at the request or with the concurrence of the Department of Game and Inland Fisheries. Such transfer may be by lease, agreement, or otherwise, approved by resolution of the Board, and signed by the Commissioner of Highways or his designee, for such period and upon such terms and conditions as the Board may direct.

B. All such transfers effected prior to July 1, 1980, by lease, agreement, or otherwise, from the Department to the Department of Game and Inland Fisheries and all regulations of the Department of Game and Inland Fisheries controlling the use of such facilities shall be and are hereby declared valid in every respect.

§ 33.2-330. Relocation or removal of utility facilities within secondary state highway system construction projects.

A. As used in this section:

"Cost of highway construction" includes the cost of relocating or removing utility facilities in connection with any project on the secondary state highway system.

"Cost of relocation or removal" includes the entire amount paid by such utility properly attributable to such relocation or removal after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.

"Facility of a utility" includes tracks, pipes, mains, conduits, cables, wires, towers, and other structures, equipment, and appliances.

"Utility" includes utilities owned by a county, city, town, or public authority, and nonprofit, consumer-owned company located in a county having a population of at least 32,000 but no more than 34,000 that (i) is exempt from income taxation under § 501(c)(3) of the Internal Revenue Code, (ii) is organized to provide suitable drinking water, (iii) has no assistance from investors, (iv) does not pay dividends, and (v) does not sell stock to the general public.

B. Whenever it is necessary that the facility of a utility in, on, under, over, or along an existing highway that is to be included within any construction project on the secondary state highway system should be relocated or removed, the owner or operator of such facility shall relocate or remove the same in accordance with the order of the Board. The cost of such relocation or removal, including the cost of installing such facility in a new location, and the cost of any lands, or any rights or interest in lands, and any other rights, required to accomplish such relocation or removal shall be ascertained and paid by the Board as a part of the cost of such project.

§ 33.2-331. Annual meeting with county officers; six-year plan for secondary state highways; certain reimbursements required.

For purposes of this section, "cancellation" means complete elimination of a highway construction or improvement project from the six-year plan.

The governing body of each county in the secondary state highway system may, jointly with the representatives of the Department as designated by the Commissioner of Highways, prepare a six-year plan for the improvements to the secondary state highway system in that county. Each such six-year plan shall be based upon the best estimate of funds to be available to the county for expenditure in the six-year period on the secondary state highway system. Each such plan shall list the proposed improvements, together with an estimated cost of each project so listed. Following the preparation of the plan, the board of supervisors or other local governing body shall conduct a public hearing after publishing notice in a newspaper published in or having general circulation in the county once a week for two successive weeks and posting notice of the proposed hearing at the front door of the courthouse of such county 10 days before the meeting. At the public hearings, which shall be conducted jointly by the board of supervisors and the representative of the Department, the entire six-year plan shall be discussed with the citizens of the county and their views considered. Following the discussion, the local governing body, together with the representative of the Department, shall finalize and officially adopt the six-year plan, which shall then be considered the official plan of the county.

At least once in each calendar year, representatives of the Department in charge of the secondary state highway system in each county, or some representative of the Department designated by the Commissioner of Highways, shall meet with the governing body of each county in a regular or special meeting of the local governing body for the purpose of preparing a budget for the expenditure of improvement funds for the next fiscal year. The representative of the Department shall furnish the local governing body with an updated estimate of funds, and the board and the representative of the Department shall jointly prepare the list of projects to be carried out in that fiscal year taken from the six-year plan by order of priority and following generally the policies of the Board in regard to the statewide improvements to the secondary state highway system. Such list of priorities shall then be presented at a public hearing duly advertised in accordance with the procedure outlined in this section, and comments of citizens shall be obtained and considered. Following this public hearing, the board, with the concurrence of the representative of the Department, shall adopt, as official, a priority program for the ensuing year, and the Department shall include such listed projects in its secondary highways budget for the county for that year.

At least once every two years following the adoption of the original six-year plan, the governing body of each county, together with the representative of the Department, shall update the six-year plan of the county by adding to it and extending it as necessary so as to maintain it as a plan encompassing six years. Whenever additional funds for secondary highway purposes become available, the local governing body may request a revision in its six-year plan in order that such plan be amended to provide for the expenditure of the additional funds. Such additions and extensions to each six-year plan shall be prepared in the same manner and following the same procedures as outlined herein for its initial preparation. Where the local governing body and the representative of the Department fail to agree upon a priority program, the local governing body may appeal to the Commissioner of Highways. The Commissioner of Highways shall consider all proposed priorities and render a decision establishing a priority program based upon a consideration by the Commissioner of Highways of the welfare and safety of county citizens. Such decision shall be binding.

Nothing in this section shall preclude a local governing body, with the concurrence of the representative of the Department, from combining the public hearing required for revision of a six-year plan with the public hearing required for review of the list of priorities, provided that notice of such combined hearing is published in accordance with procedures provided in this section.

All such six-year plans shall consider all existing highways in the secondary state highway system, including those in the towns located in the county that are maintained as a part of the secondary state highway system, and shall be made a public document.

If any county cancels any highway construction or improvement project included in its six-year plan after the location and design for the project has been approved, such county shall reimburse the Department the net

amount of all funds expended by the Department for planning, engineering, right-of-way acquisition, demolition, relocation, and construction between the date on which project development was initiated and the date of cancellation. To the extent that funds from secondary highway allocations pursuant to § 33.2-364 have been expended to pay for a highway construction or improvement project, all revenues generated from a reimbursement by the county shall be deposited into that same county's secondary highway allocation. The Commissioner of Highways may waive all or any portion of such reimbursement at his discretion.

The provisions of this section shall not apply in instances where less than 100 percent of the right-of-way is available for donation for unpaved highway improvements.

§ 33.2-332. Requesting Department of Transportation to hard-surface secondary highways; paving of certain secondary highways within existing rights-of-way; designation as Rural Rustic Road.

A. Whenever the governing body of any county, after consultation with personnel of the Department, adopts a resolution requesting the Department to hard-surface any secondary highway in such county that carries 50 or more vehicles per day with a hard surface of width and strength adequate for such traffic volume, the Department shall give consideration to such resolution in establishing priority in expending the funds allocated to such county. The Department shall consider the paving of highways with a right-of-way width of less than 40 feet under this subsection when land is, has been, or can be acquired by gift for the purpose of constructing a hard-surface highway.

B. Notwithstanding the provisions of subsection A, any unpaved secondary highway that carries at least 50 but no more than 750 vehicles per day may be paved or improved and paved within its existing right-of-way or within a wider right-of-way that is less than 40 feet wide if the following conditions are met:

1. The governing body of the county in which the highway is located has requested paving of such highway as part of the six-year plan for the county under § 33.2-331 and transmitted that request to the Commissioner of Highways; and

2. The Commissioner of Highways, after having considered only (i) the safety of such highway in its current condition and in its paved or improved condition, including the desirability of reduced speed limits and installation of other warning signs or devices; (ii) the views of the residents and owners of property adjacent to or served by such highway; (iii) the views of the local governing body making the request; (iv) the historical and aesthetic significance of such highway and its surroundings; (v) the availability of any additional land that has been or may be acquired by gift or other means for the purpose of paving such highway within its existing right-of-way or within a wider right-of-way that is less than 40 feet wide; and (vi) environmental considerations, shall grant or deny the request for the paving of such highway under this subsection.

C. Notwithstanding the provisions of subsections A and B, the governing body of any county, in consultation with the Department, may designate a highway or highway segment as a Rural Rustic Road, provided such highway or highway segment is located in a low-density development area and has an average daily traffic volume of no more than 1,500 vehicles per day. For a highway or highway segment so designated, improvements shall utilize a paved surface width based on reduced and flexible standards that leave trees, vegetation, side slopes, and open drainage abutting the highway undisturbed to the maximum extent possible without compromising public safety. Any highway designated as a Rural Rustic Road shall be subject to § 62.1-44.15:34. The Department, in consultation with the affected local governing body, shall first consider the paving of a highway or highway segment meeting the criteria for a Rural Rustic Road in accordance with this subsection before making a decision to pave it to another standard as set forth in this section.

D. The Commonwealth and its agencies, instrumentalities, departments, officers, and employees acting within the scope of their duties and authority shall be immune for damages by reason of actions taken in conformity with the provisions of this section. Immunity for the local governing body of any political subdivision requesting paving under this section and the officers and employees of any such political subdivision shall be limited to that immunity provided pursuant to § 15.2-1405.

§ 33.2-333. Emergency paving of unpaved secondary highways; notice and local concurrence.

In the event of an emergency, an unpaved highway within the secondary state highway system shall be paved only if the following procedures are satisfied:

1. The Commissioner of Highways shall consider the following factors in determining whether the unpaved secondary state highway, as the result of an emergency, shall be paved: (i) the safety of the secondary state highway in its current condition; (ii) the feasibility of restoring the unpaved highway to its functional level prior to the emergency; (iii) the concerns of the citizens in the locality wherein the affected highway is located, particularly those persons who own land adjacent to such highway; (iv) the concerns of the governing body of the locality affected; and (v) the historical and aesthetic significance of the unpaved secondary state highway and its surroundings.

2. The Commissioner of Highways shall provide notice of the intended paving to the governing body of the locality where the affected highway or portion thereof is located. The Commissioner shall provide such notice following his decision to pave the unpaved secondary highway within the locality affected.

3. The local governing body's concurrence or other recommendation regarding the proposed paving shall be forwarded to the Commissioner of Highways within 72 hours following the receipt of the Commissioner's notice.

§ 33.2-334. Requirements for taking new streets into secondary state highway system.

A. The governing body of any county that has not withdrawn from the secondary state highway system or any town within which the Department maintains the streets may, by resolution, request the Board to take any new street or highway into the secondary state highway system for maintenance if such street or highway has been developed and constructed in accordance with the Board's secondary street acceptance requirements. The Board shall adopt regulations establishing such secondary street acceptance requirements, which shall include such provisions as the Board deems necessary or appropriate to achieve the safe and efficient operation of the Commonwealth's transportation network.

B. In addition to such other provisions deemed necessary or appropriate by the Board, the regulations shall include (i) requirements to ensure the connectivity of highway and pedestrian networks with the existing and future transportation network, (ii) provisions to minimize stormwater runoff and impervious surface area, and (iii) provisions for performance bonding of new secondary highways and associated cost recovery fees.

C. No initial regulation establishing secondary street acceptance requirements pursuant to this section shall apply to subdivision plats and subdivision construction plans that have been submitted and accepted for review by the Department on or before the effective date of such initial regulations. No locality shall be obligated to approve any subdivision plat or subdivision construction plans that are inconsistent with these regulations.

D. Nothing in this section or in any regulation, policy, or practice adopted pursuant to this section shall prevent the acceptance of any street or segment of a street within a network addition that meets one or more of the public service requirements addressed in the regulations, provided that the network addition satisfies all other requirements adopted pursuant to this section. In cases where a majority of the lots along the street or street segment remain undeveloped and construction traffic is expected to utilize that street or street segment after acceptance, the bonding requirement for such street or street segment may be required by the Department to be extended for up to one year beyond that required in the secondary street acceptance requirements.

§ 33.2-335. Taking certain streets into secondary state highway system.

A. For the purposes of this section:

"County" means a county in which the secondary state highway system is constructed and maintained by the Department and that has adopted a local ordinance for control of the development of subdivision streets to the necessary standards for acceptance into the secondary state highway system.

"Qualifying rural addition cost" means that portion of the estimated engineering and construction cost to improve the street to the minimum standards for acceptance remaining after reducing the total estimated cost by any prorated amount deemed the responsibility of others based on speculative interests.

"Rural addition funds" means those funds reserved from the county's annual allocation of secondary state highway system construction funds, as defined in § 33.2-324, for the purpose of this section. If such funds are not used by such county for such purpose during the fiscal year they are so allocated, the funds may be held for such purpose for the four succeeding fiscal years. A maximum of five percent of the annual secondary state system highway construction allocation may be reserved by the local governing body for rural additions.

"Speculative interest" means that the original developer or a successor developer retains ownership in any lot abutting such street for development or speculative purposes. In instances where it is determined that speculative interest is retained by the original developer, developers, or successor developers and the governing body of the county deems that extenuating circumstances exist, the governing body of the county shall require a pro rata participation by such original developer, developers, or successor developers as prescribed in subsection D as a condition of the county's recommendation pursuant to this section.

"Street" means a street or highway shown on a plat that was recorded or otherwise opened to public use prior to July 1, 1992, at which time it was open to and used by motor vehicles, and that, for any reason, has not been taken into the secondary state highway system and serves at least three families per mile.

B. Whenever the governing body of a county recommends in writing to the Department that any street in the county be taken into and become a part of the secondary state highway system in such county, the Department thereupon, within the limit of available funds and the mileage available in such county for the inclusion of highways and streets in the secondary state highway system, shall take such street into the secondary state highway system for maintenance, improvement, construction, and reconstruction if such street, at the time of such recommendation, (i) has a minimum dedicated width of 40 feet or (ii) in the event of extenuating circumstances as determined by the Commissioner of Highways, has a minimum dedicated width of 30 feet. In either case, such streets must have easements appurtenant thereto that conform to the policy of the Board with respect to drainage. After the streets are taken into the secondary state highway system, the Department shall maintain the same in the manner provided by law. However, no such street shall be taken into and become a part of the secondary state highway system unless and until any and all required permits have been obtained and any outstanding fees, charges, or other financial obligations of whatever nature have been satisfied or provision has been made, whether by the posting of a bond or otherwise, for their satisfaction.

C. Such street shall only be taken into the secondary state highway system if the governing body of the county has identified and made available the funds required to improve the street to the required minimum standards. The county may consider the following options to fund the required improvements for streets accepted under this section:

1. The governing body of the county may use a portion of the county's annual secondary state highway system construction allocation designated as rural addition funds to fund the qualifying rural addition costs for qualifying streets if the county agrees to contribute from county revenue or the special assessment of the landowners on the street in question one-half of the qualifying rural addition cost to bring the streets up to the necessary minimum standards for acceptance. No such special assessment of landowners on such streets shall be made unless the governing body of the county receives written declarations from the owners of 75 percent or more of the platted parcels of land abutting upon such streets stating their acquiescence in such assessments. The basis for such special assessments, at the option of the local governing body, shall be either (i) the proportion the value of each abutting parcel bears to the total value of all abutting parcels on such street as determined by the current evaluation of the property for real estate tax purposes, (ii) the proportion the abutting road front footage of each parcel abutting the street bears to the total abutting road front footage of all parcels abutting on the street, or (iii) an equal amount for each parcel abutting on such street. No such special assessment on any parcel shall exceed one-third of the current valuation of such property for real estate tax purposes. Special assessments under this section shall be conducted in the manner provided in Article 2 (§ 15.2-2404 et seq.) of Chapter 24 of Title 15.2, mutatis mutandis, for assessments for local improvements.

2. The governing body of any county may use a portion of its annual secondary state highway system construction allocation designated as rural addition funds to fund the qualifying rural addition cost for qualifying streets within the limitation of funds and the mileage limitation of the Board's policy on rural additions.

3. The governing body of any county may use revenues derived from the sale of bonds to finance the construction of rural additions to the secondary state highway system of such county. In addition, from the funds allocated by the Commonwealth for the construction of secondary state highway improvements, such local governing body may use funds allocated within the Board policy for the construction of rural additions

to pay principal and interest on bonds associated with rural additions in such county, provided the revenue derived from the sale of such bonds is not used as the county matching contribution under § 33.2-357. The provisions of this section shall not constitute a debt or obligation of the Board or the Commonwealth.

4. The governing body of the county may expend general county revenue for the purposes of this section.

5. The governing body of the county may permit one or more of the landowners on the street in question to pay to the county a sum equal to one-half of the qualifying rural addition cost to bring the street up to the necessary minimum standards for acceptance into the secondary state highway system, which funds the county shall then utilize for such purpose. Thereafter, upon collection of the special assessment of landowners on such street, the county shall use such special assessment funds to reimburse, without interest, the one or more landowners for those funds that they previously advanced to the county to bring the street up to the necessary minimum standards for acceptance.

6. The governing body of the county may utilize the allocations made to the county in accordance with § 33.2-357.

D. In instances where it is determined that speculative interest exists, the basis for the pro rata percentage required of such developer, developers, or successor developers shall be the proportion that the value of the abutting parcels owned or partly owned by the developer, developers, or successor developers bears to the total value of all abutting property as determined by the current valuation of the property for real estate purposes. The pro rata percentage shall be applied to the Department's total estimated cost to construct such street to the necessary minimum standards for acceptance to determine the amount of costs to be borne by the developer, developers, or successor developers. Property so valuated shall not be assessed in the special assessment for the determination of the individual pro rata share attributable to other properties. Further, when such pro rata participation is accepted by the governing body of the county from such original developer, developers, or successor developers, such amount shall be deducted from the Department's total estimated cost, and the remainder of such estimated cost, the qualifying rural addition cost, shall then be the basis of determining the assessment under the special assessment provision or determining the amount to be provided by the county when funded from general county revenue under the definition of speculative interest in subsection A or determining the amount to be funded as a rural addition under the definition of qualifying rural addition cost in subsection A.

E. Acceptance of any street into the secondary state highway system for maintenance, improvement, construction, and reconstruction shall not impose any obligation on the Board to acquire any additional right-of-way or easements should they be necessary by virtue of faulty construction or design.

§ 33.2-336. Funds allocated to counties for Rural Addition Program; street standards.

A. Notwithstanding any other provision of law, the Board and the Commissioner of Highways shall not diminish funds allocated or allocable to any county for use under the Rural Addition Program by reason of any county ordinance authorizing the use of private roads not built to standards set by the Department or construction of subdivision streets built to standards other than those established by the Department.

B. In those counties where this section is applicable, the ordinance shall also state that any and all streets that are not constructed to meet the standards necessary for inclusion in the systems of state highways shall be privately maintained and shall not be eligible for acceptance into the systems of state highways unless improved to current Department standards with funds other than those appropriated by the General Assembly and allocated by the Board. For any street that is not constructed to Department standards, the subdivision plat and all approved deeds of subdivision, or similar instruments, shall contain a statement advertising that the streets in the subdivision do not meet the standards necessary for inclusion in the systems of state highways and will not be maintained by the Department or the county approving the subdivision and are not eligible for rural addition funds, as defined in § 33.2-335, or any other funds appropriated by the General Assembly and allocated by the Board.

§ 33.2-337. Contributions to primary or secondary state highway construction by counties.

Notwithstanding any other provision of law, any county having highways in the primary or secondary state highway system may contribute funds annually for the construction of primary or secondary highways. The funds contributed by such county shall be appropriated from the county's general revenues for use by the Department on the primary or secondary state highway system within such county as may be determined by

the board of supervisors of such county in cooperation with the Department. The funds to which any county may be entitled under the provisions of §§ 33.2-358, 33.2-361, and 33.2-364 for construction, improvement, or maintenance of primary or secondary highways shall not be diminished by reason of any funds contributed for that purpose by such county or by any person or entity, regardless of whether such contributions are matched by state or federal funds.

§ 33.2-338. Construction and improvement of primary or secondary highways by counties.

A. Notwithstanding any other provisions of this article, the governing body of any county may expend general revenues or revenues derived from the sale of bonds for the purpose of constructing or improving highways, including curbs, gutters, drainageways, sound barriers, sidewalks, and all other features or appurtenances conducive to the public safety and convenience, that either have been or may be taken into the primary or secondary state highway system. Project planning and the acquisition of rights-of-way shall be under the control and at the direction of the county, subject to the approval of project plans and specifications by the Department. All costs incurred by the Department in administering such contracts shall be reimbursed from the county's general revenues or from revenues derived from the sale of bonds or such costs may be charged against the funds that the county may be entitled to under the provisions of § 33.2-358, 33.2-361, or 33.2-364.

B. Projects undertaken under the authority of subsection A shall not diminish the funds to which a county may be entitled under the provisions of § 33.2-357, 33.2-358, 33.2-361, or 33.2-364.

C. At the request of the county, the Department may agree to undertake the design, right-of-way acquisition, or construction of projects funded by the county. In such situations, the Department and the county shall enter into an agreement specifying all relevant procedures and responsibilities concerning the design, right-of-way acquisition, construction, or contract administration of projects to be funded by the county. The county shall reimburse the Department for all costs incurred by the Department in carrying out the aforesaid activities from general revenues or revenues derived from the sale of bonds.

D. Notwithstanding any contrary provision of law, any county may undertake activities toward the design, land acquisition, or construction of primary or secondary state highway projects that have been included in the six-year plan pursuant to § 33.2-331, or in the case of a primary state highway, an approved project included in the six-year improvement program of the Board. In such situations, the Department and the county shall enter into an agreement specifying all relevant procedures and responsibilities concerning the design, right-of-way acquisition, construction, or contract administration of projects to be funded by the Department. Such activities shall be undertaken with the prior concurrence of the Department, and the Department shall reimburse the county for expenses incurred in carrying out these activities. Such reimbursement shall be derived from primary or secondary highway funds that the county may be entitled to under the provisions of this chapter. The county may undertake these activities in accordance with all applicable county procedures, provided the Commissioner of Highways finds that those county procedures are substantially similar to departmental procedures and specifications.

E. If funding for the construction of a primary or interstate project is scheduled in the Board's Six-Year Improvement Program as defined in § 33.2-214, a locality may choose to advance funds to the project. If such advance is offered, the Board may consider such request and agree to such advancement and the subsequent reimbursement of the locality of the advance in accordance with terms agreed upon by the Board or its designee and the locality.

F. Any county carrying out any construction project as authorized in this section may, in so doing, exercise the powers granted the Commissioner of Highways under Article 1 (§ 33.2-1000 et seq.) of Chapter 10 to enter property for the purpose of making an examination and survey thereof, with a view to ascertainment of its suitability for highway purposes and any other purpose incidental thereto.

G. For the purposes of this section, any county without an existing franchise agreement, when administering a Department-sanctioned project under a land-use permit or transportation project agreement, shall have the same authority as the Department pertaining to the relocation of utilities.

H. Whenever so requested by any county, funding of any project undertaken as provided in this section may be supplemented solely by state funds in order to avoid the necessity of complying with additional federal requirements, provided a determination has been made by the Department that (i) adequate state funds are

available to fully match available federal transportation funds and (ii) the Department can meet its federal obligation authority, as permitted by federal law.

§ 33.2-339. Maintenance, etc., of streets and highways in certain towns from secondary funds.

The Commissioner of Highways may, subject to the approval of the Board, upon request of the governing bodies of towns with a population of less than 3,500, according to the last United States census, select certain streets and highways in such towns for maintenance, improvement, construction, and reconstruction from allocations available from secondary highway funds not to exceed two miles of streets or highways in such towns included in the secondary state highway system, whether such two miles of streets or highways constitute connecting links between highways in the secondary state highway system in the counties or between highways in the secondary state highway system and highways in the primary state highway system, or not.

The Commissioner of Highways, with the approval of the Board, in addition to the said two miles may increase the mileage of streets and highways in such towns annually, not to exceed in any one year one-fourth mile, exclusive of any mileage transferred from the primary state highway system under the provisions of § 33.2-315 or any mileage maintained by the Department prior to its annexation by such town.

§ 33.2-340. Maintenance, etc., by Commissioner of Highways when no request for allocation.

If no request is made to the Board by the governing body of any town as provided in § 33.2-339, the Commissioner of Highways, subject to the approval of the Board, may maintain, improve, construct, and reconstruct all streets in such town that (i) have an unrestricted right-of-way width of not less than 30 feet and a hard-surface width of not less than 12 feet; (ii) were established after July 1, 1950, by such town and have a right-of-way width of not less than 50 feet and a hard-surface width of not less than 20 feet; or (iii) are functionally classified as local streets and were constructed on or after January 1, 1996, and, at the time of approval by the town, met the criteria for pavement width and right-of-way of the then-current edition design standards for subdivision streets as set forth in regulations adopted by the Board.

§ 33.2-341. Maps of secondary state highway system.

The Commissioner of Highways shall prepare and keep on file in his office for public inspection a complete map for each county showing the route of the secondary state highway system.

§ 33.2-342. Resumption of responsibility for secondary state highways by counties.

Notwithstanding any provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 and §§ 33.2-341, 33.2-343, 33.2-345, and 33.2-346, the Commissioner of Highways, following receipt of a resolution adopted by the board of supervisors of a county requesting such action, may enter into an agreement with any county that desires to resume responsibility over all or any portion of the secondary state highway system within such county's boundaries for the purposes of planning, constructing, maintaining, and operating such highways. Such agreement shall specify the equipment, facilities, personnel, and funding that will be provided to the county in order to implement such agreement's provisions.

Any county that resumes full responsibility for all of the secondary state highway system within such county's boundaries (i) shall have authority and control over the secondary state highway system within its boundaries, (ii) shall be deemed to have withdrawn from the secondary state highway system, and (iii) shall receive payments in accordance with § 33.2-366. The resolution requesting resumption of all responsibilities shall also include a request for the transfer and release of all rights-of-way and rights of access along the secondary state highway system within the county's boundaries.

§ 33.2-343. Return after withdrawal from secondary state highway system.

Any county that has withdrawn its roads from the secondary state highway system under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 shall have the right at any time to bring itself back within such secondary state highway system, provided the decision is approved by a majority of the qualified voters of such county voting in an election called for that purpose as provided in this article.

§ 33.2-344. Election to determine return to the secondary state highway system.

Upon the petition of qualified voters of any county that proposes to return its roads to the secondary state highway system equal in number to at least 20 percent of the number counted in such county for presidential electors at the last preceding presidential election or 250, whichever is more, the circuit court of such county shall make an order requiring the judges of election on such day as may be fixed in the order, but not less than

30 days after the date of the order, to open a poll and take the sense of the qualified voters of the county on the question of whether or not such county shall return to the secondary state highway system. The qualifications of voters at each such election shall be as provided by §§ 24.2-400 through 24.2-403.

The ballots for use at any such election shall be printed to state the question as follows:

"Shall . . . . . county (the name of such county to be inserted) return to the secondary state highway system for maintenance and construction by the Commonwealth?

[ ] Yes

[ ] No"

The ballots shall be printed, marked, and counted and returns made and canvassed as in other elections and as provided in § 24.2-684. The results shall be certified by the secretary of the appropriate electoral board to the State Board of Elections, to the court ordering the election, and to such other authority as may be proper to accomplish the purpose of the election. All other proceedings in connection with any such election shall be in conformity with the proceedings prescribed in § 11 of Chapter 415 of the Acts of Assembly of 1932.

§ 33.2-345. Effect of election to determine return to the secondary state highway system.

If the result of an election pursuant to § 33.2-344 is in favor of the county returning to the secondary state highway system, such county shall, after the entry by the court of an order so declaring the result of such election and on and after the first day of July next succeeding, be within the secondary state highway system as fully and completely as if it had not withdrawn. All provisions of this article shall thereupon apply to and be enforced as to such county to the same extent as if the dates in Chapter 415 of the Acts of Assembly of 1932 had been changed to correspond with the year in which such county returns to the secondary state highway system. Such county shall not be allowed again to withdraw from the secondary state highway system.

§ 33.2-346. Machinery, etc., owned by returning county.

The Commissioner of Highways shall, as promptly as practicable, make an inventory and appraisal of all road machinery, equipment, teams, material, and supplies on hand or belonging to the local highway authorities of any county that returns to the secondary state highway system or any district thereof that may be deemed by him suitable for work on the secondary state highway system and shall file such inventory and appraisal with the Board. The local highway authorities may, if they so elect, turn over to the Commonwealth such road machinery, equipment, teams, material, and supplies at the appraised value thereof, which shall be paid within two years out of funds available for expenditure on highways in the secondary state highway system, or, if they so prefer, the local highway authorities may retain or sell any of such property otherwise or, if they so elect, may turn over to the Commissioner of Highways all or any of such property for use upon the secondary state highway system without reimbursement therefor. Any sums received by the local highway authorities under the provisions of this section shall, so far as may be necessary, be applied on account of obligations previously contracted for county or district highway purposes and the balance, if any, for general county purposes.

Article 4.

Urban Highway System.

§ 33.2-347. Minimum street and highway standards for certain towns.

Notwithstanding the provisions of § 33.2-340, any town in which 70 percent or more of developable land within its boundaries has a natural grade of 20 percent or more may by ordinance provide for streets or highways established on or after July 1, 1980, with an unrestricted right-of-way width of not less than 40 feet and a hard-surface width of not less than 18 feet, provided that no such requirement of any such town shall be less stringent than that of the county in which the town is located. Streets and highways so established and constructed shall be eligible for payment in accordance with § 33.2-340.

§ 33.2-348. Matching highway funds; funding of urban system construction projects.

A. For the purposes of this section, "construction or improvement" means the supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, design and mapping, costs of rights-of-way, signs, signals and markings, elimination of hazards of railroad grade crossings, and expenses incidental to the relocation of any utility or its facilities owned by a municipality or by a public utility district or public utility authority.

B. In any case in which an act of Congress requires that federal-aid highway funds made available for the construction or improvement of federal or state highways be matched, the Board shall contribute such matching funds. However, in the case of municipalities with a population of 3,500 or more eligible for an allocation of construction funds for urban highways under § 33.2-362 and the Town of Wise, the Town of Lebanon, and the Town of Altavista, the Board may contribute toward the cost of construction of any federal-aid highway or street project 98 percent of the necessary funds, including the federal portion, if the municipality contributes the other two percent, and provided further that within such municipalities the Board may contribute all the required funds on highways in the Interstate System.

In the case of municipalities with a population of 3,500 or more eligible for an allocation of construction funds for urban highways under § 33.2-362 and the Town of Wise, the Town of Lebanon, and the Town of Altavista, the Board may contribute toward the costs of construction or improvement of any highway or street project for which no federal-aid highway funds are made available 98 percent of the necessary funds if the municipality contributes the other two percent.

For purposes of matching highway funds, such contributions shall continue to apply to such municipality regardless of any subsequent change in population and shall cease to apply only when so specifically provided by an act of the General Assembly. All actions taken prior to July 1, 2001, by municipalities meeting the criteria of the foregoing provisions of this section are hereby confirmed.

C. In the case of municipalities with a population of less than 3,500 that on June 30, 1985, maintained certain streets under former § 33.1-80 as then in effect, the Board shall contribute toward the costs of construction or improvement of any highway or street project 100 percent of the necessary funds. The contribution authorized by this subsection shall be in addition to any other contribution, and projects established in reference to municipalities with a population of less than 3,500 shall not in any way be interpreted to change any other formula or manner for the distribution of funds to such municipalities for construction, improvement, or maintenance of highways or streets. The Board may accept from a municipality, for right-of-way purposes, contributions of real estate to be credited, at fair market value, against the matching obligation of such municipality under the provisions of this section.

D. If any municipality requesting a Board contribution subsequently decides to cancel the construction or improvement after the Board has initiated the project at the request of the municipality, the municipality shall reimburse the Board the net amount of all funds expended by the Board for planning, engineering, right-of-way acquisition, demolition, relocation, and construction between the date of initiation by the municipality and the date of cancellation. The Board has the authority to waive all or any portions of the reimbursement at its discretion.

E. For purposes of this section, on any construction or improvement project in the Cities of Chesapeake, Hampton, Newport News, or Richmond and funded in accordance with subdivision C 2 of § 33.2-358, the additional cost of placing aboveground utilities below ground may be paid from funds allocated for that project. The maximum cost due to this action shall not exceed $5 million. Nothing contained in this section shall relieve utility owners of their responsibilities and costs associated with the relocation of their facilities when required to accommodate a construction or improvement project.

§ 33.2-349. Character of signs, markings, and signals.

On any urban highway upon which the Board has expended funds in the manner provided in §§ 33.2-348 and 33.2-362, the location, form, and character of informational, regulatory, and warning signs, curb and pavement, or other markings and traffic signals installed or placed by any public authority shall be subject to the approval of the Commissioner of Highways.

§ 33.2-350. Landscape studies for urban highway construction projects.

Prior to final design of any urban highway funded in part by any municipality, such municipality may hire a competent authority to conduct a landscape study that shall assess the effect such proposed highway construction may have on existing trees, shrubbery, and other flora and shall make recommendations as to modifications to such project that would minimize damage to existing flora. The Department shall consider such recommendations and modify such highway construction plans to protect trees, shrubbery, and other flora if determined by the Department to be reasonable and practicable. The cost of such landscape study shall be payable by the municipality that initiates such study.

Article 5.

Allocation of Highway Funds.

§ 33.2-351. Definition of "allocation."

For the purposes of this article, "allocation" means a commitment to expend funds available for construction during each fiscal year. Funds that cannot be expended as allocated within each fiscal year shall be identified as part of future commitments, and the reason for the failure to spend allocations shall be specifically included in the annual construction improvement program.

§ 33.2-352. Department of Transportation to develop asset management practices; Commissioner of Highways to report to Commonwealth Transportation Board on maintenance.

A. The Department shall develop asset management practices in the operation and maintenance of the systems of state highways.

B. The Commissioner of Highways shall advise the Board on or before June 30 of even-numbered years of performance targets and outcomes that are expected to be achieved, based on the funding identified for maintenance, over the biennium beginning July 1 of that year. In addition, not later than September 30 of even-numbered years, the Commissioner of Highways shall advise the Board on the Department's accomplishments relative to the expected outcomes and budget expenditures for the biennium ending June 30 of that year and also advise the Board as to the methodology used to determine maintenance needs and the justification as to the maintenance funding by source.

§ 33.2-353. Commonwealth Transportation Board to develop and update Statewide Transportation Plan.

A. The Board shall, with the assistance of the Office of Intermodal Planning and Investment, conduct a comprehensive review of statewide transportation needs in a Statewide Transportation Plan setting forth assessment of capacity needs for all corridors of statewide significance, regional networks, and improvements to promote urban development areas established pursuant to § 15.2-2223.1. The assessment shall consider all modes of transportation. Such corridors shall be planned to include multimodal transportation improvements, and the plan shall consider corridor location in planning for any major transportation infrastructure, including environmental impacts and the comprehensive land use plan of the locality in which the corridor is planned. In the designation of such corridors, the Board shall not be constrained by local, district, regional, or modal plans.

The Statewide Transportation Plan shall be updated as needed but no less than once every four years. The plan shall promote economic development and all transportation modes, intermodal connectivity, environmental quality, accessibility for people and freight, and transportation safety.

B. The Statewide Transportation Plan shall establish goals, objectives, and priorities that cover at least a 20-year planning horizon, in accordance with federal transportation planning requirements. The plan shall include quantifiable measures and achievable goals relating to, but not limited to, congestion reduction and safety, transit and high-occupancy vehicle facility use, job-to-housing ratios, job and housing access to transit and pedestrian facilities, air quality, movement of freight by rail, and per capita vehicle miles traveled. The Board shall consider such goals in evaluating and selecting transportation improvement projects for inclusion in the Six-Year Improvement Program pursuant to § 33.2-214.

C. The plan shall incorporate the measures and goals of the approved long-range plans developed by the applicable regional organizations. Each such plan shall be summarized in a public document and made available to the general public upon presentation to the Governor and General Assembly.

D. It is the intent of the General Assembly that this plan assess transportation needs and assign priorities to projects on a statewide basis, avoiding the production of a plan that is an aggregation of local, district, regional, or modal plans.

§ 33.2-354. Commonwealth Transportation Board to develop and update Statewide Pedestrian Policy.

A. The Board shall develop and update as needed a Statewide Pedestrian Policy. The Board shall:

1. Provide opportunities for receipt of comments, suggestions, and information from local governments, business and civic organizations, and other concerned parties;

2. Identify and evaluate needs at statewide, regional, and local levels for additional facilities required to promote pedestrian access to schools, places of employment and recreation, and major activity centers;

3. Consider and evaluate potential ways of meeting these needs; and

4. Set forth conclusions as to goals, objectives, and strategies to meet these needs in a safety-conscious manner.

B. The Board shall coordinate the development of the Statewide Pedestrian Policy with that of the Statewide Transportation Plan provided for in § 33.2-353 and cover the same 20-year planning horizon. The Statewide Pedestrian Policy shall be summarized in a public document and made available to the general public upon presentation to the Governor and General Assembly, either in combination with the Statewide Transportation Plan or as a separate document.

§ 33.2-355. Goals for addressing transportation needs of populations with limited mobility.

The Board, in cooperation with other local, regional, or statewide agencies and entities vested with transportation planning responsibilities, shall establish specific mobility goals for addressing the transportation needs of populations with limited mobility, including the elderly, persons with disabilities that limit their mobility, persons not served by any form of mass transit, and those who, for whatever reasons, cannot afford motor vehicles or cannot be licensed to drive them. Such goals, once established, shall be considered in the development and implementation of the Statewide Transportation Plan required by § 33.2-353.

§ 33.2-356. Funding for extraordinary repairs.

Notwithstanding any contrary provision of the Code, the Board has the authority to provide, from revenues available for highway capital improvements under § 33.2-1526, except for revenues pledged to secure any bonds issued for transportation purposes, for exceptionally heavy expenditures for repairs or replacements made necessary by highway damage resulting from extraordinary accidents, vandalism, weather conditions, or acts of God as well as to respond to federal funding initiatives that require matching funds.

§ 33.2-357. Revenue-sharing funds for systems in certain localities.

A. From revenues made available by the General Assembly and appropriated for the improvement, construction, reconstruction, or maintenance of the systems of state highways, the Board may make an equivalent matching allocation to any locality for designations by the governing body of up to $10 million for use by the locality to improve, construct, or reconstruct the highway systems within such locality with up to $5 million for use by the locality to maintain the highway systems within such locality. After adopting a resolution supporting the action, the governing body of the locality may request revenue-sharing funds to improve, construct, reconstruct, or maintain a highway system located in another locality or between two or more localities or to bring subdivision streets, used as such prior to the date specified in § 33.2-335, up to standards sufficient to qualify them for inclusion in the primary or secondary state highway system. All requests for funding shall be accompanied by a prioritized listing of specified projects.

B. In allocating funds under this section, the Board shall give priority first to allocations that will accelerate projects in the Board's Six-Year Improvement Program or the locality's capital plan and next to those pavement resurfacing and bridge rehabilitation projects where the maintenance needs analysis determines that the infrastructure is below the Department's maintenance performance targets.

C. The Department shall contract with the locality for the implementation of the project. Such contract may cover either a single project or may provide for the locality's implementation of several projects. The locality shall undertake implementation of the particular project by obtaining the necessary permits from the Department in order to ensure that the improvement is consistent with the Department's standards for such improvements. At the request of the locality, the Department may provide the locality with engineering, right-of-way acquisition, construction, or maintenance services for a project with its own forces. The locality shall provide payment to the Department for any such services. If administered by the Department, such contract shall also require that the governing body of the locality pay to the Department within 30 days the local revenue-sharing funds upon written notice by the Department of its intent to proceed. Any project having funds allocated under this program shall be initiated in such a fashion that at least a portion of such funds have been expended within one year of allocation. Any revenue-sharing funds for projects not initiated after two subsequent fiscal years of allocation may be reallocated at the discretion of the Board.

D. Total Commonwealth funds allocated by the Board under this section shall be no less than $15 million and no more than $200 million in each fiscal year, subject to appropriation for such purpose. For any fiscal

year in which less than the full program allocation has been allocated by the Board to specific governing bodies, those localities requesting the maximum allocation under subsection A may be allowed an additional allocation at the discretion of the Board.

E. The funds allocated by the Board under this section shall be distributed and administered in accordance with the revenue-sharing program guidelines established by the Board.

§ 33.2-358. Allocation of funds among highway systems.

A. For the purposes of this section:

"Bridge reconstruction and rehabilitation" means reconstruction and rehabilitation of those bridges identified by the Department as being functionally obsolete or structurally deficient.

"High priority projects" means those projects of regional or statewide significance identified by the Board that reduce congestion, increase safety, create jobs, or increase economic development.

"Smart roadway technology" means those projects or programs identified by the Board that reduce congestion, improve mobility, improve safety, provide up-to-date travel data, or improve emergency response.

B. The Board shall allocate each year from all funds made available for highway purposes such amount as it deems reasonable and necessary for the maintenance of roads within the Interstate System, the primary state highway system, and the secondary state highway system and for city and town street maintenance payments made pursuant to § 33.2-319 and payments made to counties that have withdrawn or elect to withdraw from the secondary state highway system pursuant to § 33.2-366.

C. After funds are set aside for administrative and general expenses and pursuant to other provisions in this title that provide for the disposition of funds prior to allocation for highway purposes, and after allocation is made pursuant to subsection B, the Board shall allocate an amount determined by the Board not to exceed $500 million in any given year as follows: (i) 25 percent to bridge reconstruction and rehabilitation; (ii) 25 percent to advancing high priority projects statewide; (iii) 25 percent to reconstructing deteriorated Interstate System and primary state highway system pavements determined to have a Combined Condition Index of less than 60; (iv) 15 percent to projects undertaken pursuant to the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.); (v) five percent to paving unpaved highways carrying more than 200 vehicles per day; and (vi) five percent to smart roadway technology, provided that at the discretion of the Board such percentages of funds may be adjusted in any given year to meet project cash flow needs or when funds cannot be expended due to legal, environmental, or other project management considerations and provided that such allocations shall cease beginning July 1, 2020. After such allocations are made, the Board may allocate each year up to 10 percent of the funds remaining for highway purposes for the undertaking and financing of rail projects that in the Board's determination will result in mitigation of highway congestion. After the foregoing allocations have been made, the Board shall allocate the remaining funds available for highway purposes, exclusive of federal funds for the Interstate System, among the highway systems for construction first pursuant to §§ 33.2-359 and 33.2-360 and then as follows:

1. Forty percent of the remaining funds exclusive of federal-aid matching funds for the Interstate System shall be allocated to the primary state highway system, including the arterial network, and in addition, an amount shall be allocated to the primary state highway system as interstate matching funds as provided in subsection B of § 33.2-361.

2. Thirty percent of the remaining funds exclusive of federal-aid matching funds for the Interstate System shall be allocated to urban highways for state aid pursuant to § 33.2-348.

3. Thirty percent of the remaining funds exclusive of federal-aid matching funds for the Interstate System shall be allocated to the secondary state highway system.

D. In addition, the Board, from funds appropriated for such purpose in the general appropriation act, shall allocate additional funds to the Cities of Newport News, Norfolk, and Portsmouth and the County of Warren in such manner and apportion such funds among such localities as the Board may determine, unless otherwise provided in the general appropriation act. The localities shall use such funds to address highway maintenance and repair needs created by or associated with port operations in those localities.

E. Notwithstanding the provisions of this section, the General Assembly may, through the general appropriation act, permit the Governor to increase the amounts to be allocated to highway maintenance, highway construction, either or both.

§ 33.2-359. Unpaved secondary highway fund created; allocations.

A. Before funds are allocated for distribution for highway construction pursuant to subdivisions C 1, 2, and 3 of § 33.2-358, a fund shall be established for the paving of nonsurface treated secondary highways that carry 50 vehicles or more per day. Such fund shall contain 5.67 percent of the total funds available for highway construction under subdivisions C 1, 2, and 3 of § 33.2-358.

B. Such funds shall be distributed to counties in the secondary state highway system based on the ratio of nonsurface treated roads in each county carrying 50 vehicles or more per day to the total number of such nonsurface treated roads in the Commonwealth.

C. The governing body of any county may have funds allocated to the county under this section added to the county's secondary system construction funds allocated pursuant to § 33.2-364. For each $250,000 or portion thereof added to secondary construction funds under this provision, the amount of the county's nonsurface treated roads used to distribute funds under this section in subsequent years shall be reduced by one mile or proportional part of one mile.

§ 33.2-360. Allocation of funds for interstate match.

After making the allocations provided for in subsection B of § 33.2-358, but before making any allocations under subdivisions C 1, 2, and 3 of § 33.2-358, a fund shall be established for matching federal-aid interstate funds.

This fund shall be established annually by allocating to it all federal-aid interstate matching funds needed for the year, less the total amount of district primary allocations for the interstate federal-aid match allocated under subsection B of § 33.2-361.

§ 33.2-361. Allocation of construction funds for primary state highway system and interstate match.

A. The Board shall allocate such funds as are available under subdivision C 1 of § 33.2-358 to the primary state highway system, including the arterial network, for construction and shall apportion such funds among the nine highway construction districts so that each highway construction district shall be allocated a share of such funds equal to the proportion that such highway construction district bears to the Commonwealth as a whole in terms of (i) vehicle-miles traveled on the primary state highway system, (ii) primary highway lane mileage, and (iii) a primary highway need factor that adjusts the weights in the allocation formula for the highway construction district with the largest under-allocation relative to primary needs, with vehicle-miles traveled weighted 70 percent, primary highway lane mileage weighted 25 percent, and the primary highway need factor weighted five percent.

B. Out of each district's total allocation of primary funds pursuant to subdivision C 1 of § 33.2-358, the Board shall allocate all needed interstate federal-aid matching funds, up to a maximum of 25 percent of the district's primary allocation. Any additional interstate federal-aid matching funds needed in a district shall be allocated by the Board from the fund for matching federal-aid interstate funds established in § 33.2-360.

C. Notwithstanding subsection A, the Board may provide for exceptionally heavy expenditures for repairs or replacements made necessary by highway damage resulting from accidents, severe weather conditions, acts of God, or vandalism.

D. Notwithstanding subsection A, the Board may, from funds available under subdivision C 1 of § 33.2-358, provide funding for the construction of highway projects maintained or to be maintained by a municipality, provided such project involves a component of the National Highway System and such funds are derived from allocations to the highway construction district in which such project is located. Any allocation under this subsection shall not diminish funds allocated or allocable to any such municipality under § 33.2-362.

E. Such funds allocated to the primary state highway system shall, as far as possible, be allotted prior to the commencement of the fiscal year and public announcement made of such allotment, but the Board shall not approve such allotment until after a public hearing at which political subdivisions of the Commonwealth and interested citizens may be heard.

In any case where any allotment of funds is made under this subsection to any county all or a part of which subsequently is incorporated as or into a city or town, such allocation shall not be impaired thereby and the funds so allocated shall be expended as if such county or any part thereof had never become an

incorporated city, but that portion of such city shall not be eligible to receive funds as a city during the same year it receives the funds allocated as a county or as any part of a county.

§ 33.2-362. Allocation of construction funds for urban system highways.

A. For the purposes of this section, "population" means either the population according to the latest United States census or the latest population estimate of the Weldon Cooper Center for Public Service of the University of Virginia, whichever is more recent.

B. Such funds as are allocated to urban highways in (i) all towns that have a population of more than 3,500 according to the last preceding United States census; (ii) all towns that, according to evidence satisfactory to the Board, have attained a population of more than 3,500 since the last preceding United States census; (iii) Chase City, Elkton, Grottoes, Narrows, Pearisburg, and Saltville, which, on June 30, 1985, maintained certain streets under former § 33.1-80 as then in effect; (iv) all cities regardless of their populations; and (v) the Towns of Wise, Lebanon, and Altavista pursuant to subdivision C 2 of § 33.2-358 shall be apportioned among the cities and towns of the Commonwealth by the Board in such a manner that each city or town to which these funds are allocable receives the same proportion of total funds available as the population of that city or town bears to the total population of all cities and towns among which such funds are allocable. Whenever any city or town qualifies under this section for allocation of funds, such qualification shall continue to apply to such city or town notwithstanding any subsequent changes in population and shall cease to apply only upon the subsequent enactment by the General Assembly of a measure in which the intent is clearly stated. All allocations made prior to July 1, 2001, to cities and towns meeting the criteria in this subsection are hereby ratified, validated, and confirmed.

C. No apportionment pursuant to this section shall be made to any city or town that does not have an urban project or projects approved by the Board, and in no case shall the apportionment to any city or town exceed the total estimated cost of the project or projects for which funds are allocated. Such funds shall, as far as possible, be allotted prior to the commencement of the fiscal year and public announcement shall be made of such allotment. Any apportionment due but not received by any city or town in a fiscal year for use under this section shall accrue as a credit to such city or town and be held for its construction projects for five succeeding fiscal years. Funds accrued shall be apportioned prior to any other distribution under this section in the fiscal year requested by the city or town.

A portion of allocations made to any city or town under this section may be used on streets functionally classified as arterial for (i) the purchase of residue parcels or land resulting from highway construction or reconstruction projects where the purchase will result in necessary access control or land use control directly related to the purpose and need for the project, (ii) improvements to traffic safety, (iii) improvement to traffic flow and transportation system use, or (iv) any combination of clauses (i), (ii), and (iii). Notwithstanding other provisions of this section, not more than two-thirds of the annual urban system highway funds apportioned to a city or town under this section may be used to reimburse the locality for debt service for bonds or eligible project costs incurred on approved projects included in the Six-Year Improvement Program of the Board and the city's or town's capital improvement program. Such funds may also be used by the locality for debt service for bonds issued for, or eligible project costs incurred or to be incurred on, approved projects included, at the time such bonds are issued or such costs are incurred or are to be incurred, in the Six-Year Improvement Program of the Board and the city's or town's capital improvement program. Any such funds so apportioned to and received by such city or town, or any portion thereof, may be deposited in a special fund that shall be established separate and apart from any other funds, general or special.

When the city or town presents a resolution requesting that a portion of its annual urban system apportionment be set aside for reimbursement for, or payment of, debt service under this section for a specific eligible project, the Board shall, subject to appropriation and allocation, set aside no more than two-thirds of the anticipated annual apportionment of urban system funding to the city or town for such purpose, provided such funds have not been previously committed by the Board for projects contained in the Six-Year Improvement Program.

The setting aside and use of funds under this section for reimbursement for, or payment of, debt service shall be subject to such terms and conditions as may be prescribed by the Commissioner of Highways.

The provisions of this section shall not constitute a debt or obligation of the Board or the Commonwealth.

D. The governing body of any city or town may, with the consent of the Board, expend urban system highway construction funds allocated annually to the city or town by the Board for the design, land acquisition, and construction of transportation projects that have been included in the Board's Six-Year Improvement Program and for the resurfacing, restoration, rehabilitation, reconstruction, and improvement of streets within the city or town for which the city receives maintenance payments under § 33.2-319.

E. At the election of each city or town, payment of the funds may be made in equal amounts, one in each quarter of the fiscal year, and shall be reduced in the case of each city and town by the amount of federal-aid construction funds credited to each city or town and the amount of funds forecasted to be expended by the Department of Transportation or the Department of Rail and Public Transportation for any project on behalf of the city or town. Those cities or towns that decide to take over the responsibility for their construction program shall notify the Board by December 31 for implementation the following fiscal year.

§ 33.2-363. Construction of U.S. Route 29 bypass.

If the construction of a U.S. Route 29 bypass around any city located in any county that both (i) is located outside Planning District 8 and (ii) operates under the county executive form of government is not constructed because of opposition from a metropolitan planning organization, and the Federal Highway Administration requires the Commonwealth to reimburse the federal government for federal funds expended in connection with such project, an amount equal to the amount of such reimbursement shall be deducted by the Board from primary state highway system construction funds allocated or allocable to the highway construction district in which the project was located. Furthermore, in the event of such nonconstruction, an amount equal to the total of all state funds expended on such project shall be deducted by the Board from primary state highway system construction funds allocated or allocable to the highway construction district in which the project was located.

§ 33.2-364. Allocation of construction funds within secondary state highway system.

A. For the purposes of this section:

"Area" means the total land area of a county reduced by the area of any military reservations and state or national parks or forests within its boundaries and such other similar areas and facilities of five square miles in area or more, as may be determined by the Board.

"Population" means either the population according to the latest United States census or the latest population estimate of the Weldon Cooper Center for Public Service of the University of Virginia, whichever is more recent.

B. Such funds as are allocated to the secondary state highway system pursuant to subdivision C 3 of § 33.2-358 shall be apportioned among the counties in the secondary state highway system by the Board so that each such county shall be allocated a share of such funds equal to the proportion that such county bears to the Commonwealth as a whole in terms of area and population, with population being weighted 80 percent and area being weighted 20 percent.

If so requested in a resolution adopted by the local governing body, funds allocated to any county under this section may be used to support primary state highway system construction projects within the county.

Before allocating funds under the provisions of this subsection, the Board may provide for exceptionally heavy expenditures for repairs or replacements made necessary by highway damage resulting from accidents, severe weather conditions, acts of God, or vandalism.

C. Notwithstanding other provisions of this section, not more than one-third of the annual secondary state highway system funds apportioned to a county under this section may be used to reimburse the county for (i) debt service for bonds or (ii) eligible project costs incurred on approved projects included in the county's Secondary Six-Year Plan and the county's capital improvement program. Such funds may also be used by the county for debt service for bonds issued for, or eligible project costs incurred or to be incurred on, approved projects included, at the time such bonds are issued or such costs are incurred or are to be incurred, in the Six-Year Improvement Program of the Board and the county's capital improvement program. Any such funds so apportioned to and received by such county, or any portion thereof, may be deposited in a special fund that shall be established separate and apart from any other funds, general or special.

When a county presents a resolution requesting that a portion of its annual construction allocation for secondary highways be set aside for reimbursement for, or payment of, debt service under this section for a specific eligible project, the Board shall, subject to appropriation and allocation, set aside no more than one-

third of the anticipated annual allocation of secondary state highway system construction funding to the county for such purpose, provided such funds have not been previously committed for projects contained in the county's Secondary Six-Year Plan.

The setting aside and use of funds under this section for reimbursement for, or payment of, debt service shall be subject to such terms and conditions as may be prescribed by the Commissioner of Highways.

The provisions of this section shall not constitute a debt or obligation of the Board or the Commonwealth.

D. In counties having elected to manage the construction program for the secondary state highway system within the county in accordance with § 33.2-342, payment of funds from the allocation of secondary state highway system construction funds for the county may be made in equal amounts, one in each quarter of the fiscal year, and shall be reduced by the amount of federal-aid construction funds credited to each county, which will be reimbursed as qualifying expenditures occur and by the amount of funds forecast by the Department of Transportation and by the Department of Rail and Public Transportation to be expended for any construction project or county-wide activities on behalf of the county or other financial obligations. Those counties that decide to take over the responsibility for the secondary state highway system construction program shall notify the Board by July 1 for implementation the following year. Implementation shall take place as specified in the agreement referenced in § 33.2-342.

E. The chief administrative officer of counties receiving funds under subsection D shall make annual reports of expenditures to the Department in such form as the Board shall prescribe, accounting for all construction expenditures made from quarterly payments. Such reports shall be included in the scope of the annual audit of each county conducted by independent certified public accountants.

§ 33.2-365. Allocation of proceeds of Commonwealth of Virginia Transportation Capital Projects Revenue Bonds.

The Board shall allocate, use, and distribute the proceeds of any bonds it is authorized to issue on or after July 1, 2007, pursuant to subdivision 10 of § 33.2-1701, as follows:

1. A minimum of 20 percent of the bond proceeds shall be used for transit capital as further described in subdivision A 4 c of § 58.1-638.

2. A minimum of 4.3 percent of the bond proceeds shall be used for rail capital consistent with the provisions of §§ 33.2-1601 and 33.2-1602.

3. The remaining amount of bond proceeds shall be used for paying the costs incurred or to be incurred for construction of transportation projects with such bond proceeds used or allocated as follows: (i) first, to match federal highway funds projected to be made available and allocated to highway and public transportation capital projects to the extent determined by the Board, for purposes of allowing additional state construction funds to be allocated to the primary, urban, and secondary highway systems pursuant to subdivisions C 1, 2, and 3 of § 33.2-358; (ii) second, to provide any required funding to fulfill the Commonwealth's allocation of equivalent revenue sharing matching funds pursuant to § 33.2-357 to the extent determined by the Board; and (iii) third, to pay or fund the costs of statewide or regional projects throughout the Commonwealth. Costs incurred or to be incurred for construction or funding of these transportation projects shall include environmental and engineering studies; rights-of-way acquisition; improvements to all modes of transportation; acquisition, construction, and related improvements; and any financing costs or other financing expenses relating to such bonds. Such costs may include the payment of interest on such bonds for a period during construction and not exceeding one year after completion of construction of the relevant project.

4. The total amount of bonds authorized shall be used for purposes of applying the percentages in subdivisions 1, 2, and 3.

§ 33.2-366. Funds for counties that have withdrawn or elect to withdraw from the secondary state highway system.

Pursuant to subsection B of § 33.2-358, the Board shall make the following payments to counties that have withdrawn or elect to withdraw from the secondary state highway system under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 and that have not elected to return: to any county having withdrawn prior to June 30, 1985, and having an area greater than 100 square miles, an amount equal to $12,529 per lane-mile for fiscal year 2014, and to any county having an area less than 100 square miles, an

amount equal to $17,218 per lane-mile for fiscal year 2014; to any county that elects to withdraw after June 30, 1985, the Board shall establish a rate per lane-mile for the first year using (i) an amount for maintenance based on maintenance standards and unit costs used by the Department to prepare its secondary state highway system maintenance budget for the year in which the county withdraws and (ii) an amount for administration equal to five percent of the maintenance figure determined in clause (i). The payment rates shall be adjusted annually by the Board in accordance with procedures established for adjusting payments to cities and towns under § 33.2-319, and lane mileage shall be adjusted annually to include (a) streets and highways accepted for maintenance in the county system by the local governing body or (b) streets and highways constructed according to standards set forth in the county subdivision ordinance or county thoroughfare plan, and being not less than the standards set by the Department. Such counties shall, in addition, each receive for construction from funds allocated pursuant to subdivision C 3 of § 33.2-358 an annual amount calculated in the same manner as payments for construction in the secondary state highway system are calculated.

Payment of the funds shall be made in four equal sums, one in each quarter of the fiscal year, and shall be reduced in the case of each such county by the amount of federal-aid construction funds credited to each such county.

The chief administrative officer of such counties receiving such funds shall make annual reports of expenditures to the Board, in such form as the Board shall prescribe, accounting for all expenditures, including delineation between construction and maintenance expenditures and reporting on their performance as specified in subsection B of § 33.2-352. Such reports shall be included in the scope of the annual audit of each county conducted by independent certified public accountants.

§ 33.2-367. Highway aid to mass transit.

In allocating highway funds, the Board may use such funds for highway aid to mass transit facilities when such use will best accomplish the purpose of serving the transportation needs of the greatest number of people.

Highway aid to mass transit may be accomplished by (i) using highway funds to aid in paying transit operating costs borne by localities; (ii) acquiring or constructing transit-related highway facilities such as exclusive bus lanes; bus turn-outs; bus passenger shelters; fringe parking facilities, including necessary access roads, to promote transit use and relieve highway congestion; and off-street parking facilities to permit exclusive use of curb lane by buses; or (iii) permitting mass transit facilities to occupy highway median strips without the reimbursement required by § 33.2-1015, all to the end that highway traffic may be relieved through the development of more efficient mass transit.

Expenditures pursuant to this section shall be made from funds available for the construction of state highways within the highway construction district in which the transit facilities are wholly or partly located.

The Board may contract with the governing bodies constituting a transportation district, or in its discretion, other local governing bodies, for the accomplishment of a project to which funds have been allocated under the provisions of this section. Whenever such projects are being financed by advance annual allocation of funds, the Board may make such funds available to the contracting governing bodies in annual increments that may be used for other transit purposes until needed for the project for which allocated; however, the Board may require bond or other satisfactory assurance of final completion of the contract.

The Board may also, at the request of local governing bodies, use funds allocated for urban highways or secondary highways within their jurisdiction to accomplish the purposes of this section.

The General Assembly may, through the general appropriation act, provide for (i) limits on the amounts or purposes of allocations made under this section and (ii) the transfer of allocations from one eligible recipient to another.

§ 33.2-368. Financial plans for transportation construction projects.

For transportation construction projects valued in excess of $100 million, the Commissioner of Highways shall require that a financial plan be prepared and presented to the Board for its review. This plan shall include, but not be limited to, the following: (i) a complete cost estimate for all major project elements, (ii) an implementation plan with the project schedule and cost-to-complete information presented for each year, (iii) identified revenues by funding source available each year to meet project costs, (iv) a detailed cash-flow analysis for each year of the proposed project, and (v) efforts to be made to ensure maximum involvement of private enterprise and private capital.

CHAPTER 4.

LIMITED ACCESS HIGHWAYS, SCENIC HIGHWAYS AND VIRGINIA BYWAYS, AND HIGHWAYS OVER DAMS.

§ 33.2-400. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Limited access highway" means a highway especially designed for through traffic, over which abutters have no easement or right of light, air, or access by reason of the fact that their property abuts upon such limited access highway.

"Scenic highway" means a highway, designated as such by the Board, within a protected scenic corridor located, designed, and constructed so as to preserve and enhance the natural beauty and cultural value of the countryside.

"Virginia byway" means a highway, designated as such by the Board, having relatively high aesthetic or cultural value, leading to or within areas of historical, natural, or recreational significance.

§ 33.2-401. Power and authority of Commonwealth Transportation Board relating to limited access highways.

The Board may plan, designate, acquire, open, construct, reconstruct, improve, maintain, discontinue, abandon, and regulate the use of limited access highways in the same manner in which it is now or may be authorized to plan, designate, acquire, open, construct, reconstruct, improve, maintain, discontinue, abandon, and regulate the use of other highways within the Commonwealth. The Board shall also have any and all other additional authority and power relative to other highways, which shall include the right to acquire by purchase, eminent domain, grant, or dedication title to such lands or rights-of-way for such limited access highways.

Notwithstanding any other provisions of this Code, any highway, street, or portion thereof to which access rights of abutters have been acquired by the Board and which is subsequently incorporated into the street system of a city or town by any method shall remain limited access until and unless the governing body of the city or town, after securing the approval of the Board, acts to discontinue such limited access feature.

§ 33.2-402. Designating existing highway as limited access highway; extinguishing easements of access.

The Board may designate all or any part of an existing highway as a limited access highway. When an existing highway is so designated, the Board shall where necessary extinguish all existing easements of access, light, or air.

§ 33.2-403. Business enterprises restricted on limited access highway right-of-way.

No commercial establishment or business enterprise shall be constructed or located upon any right-of-way of any limited access highway.

§ 33.2-404. Service roads parallel to limited access highways; standards for access, service, etc.

The Department may construct service roads parallel to a limited access highway in order to provide access at designated points for property owners abutting on the limited access highway and after the construction of such service roads shall maintain and regulate traffic over them.

The construction or alteration of any access, feeder, or service road that is to serve properties isolated by construction of a limited access highway shall meet all minimum state standards or the standards of the cities or towns with a population of more than 3,500, or of counties that maintain their own road networks, as provided for by ordinance, whichever is more strict.

§ 33.2-405. Designation of scenic highways and Virginia byways.

The Board is authorized to designate any highway as a scenic highway or as a Virginia byway. This designation shall be made in cooperation with the Director of the Department of Conservation and Recreation. Prior to designation, the local governing body and local planning commission, if any, in each county or city wherein the proposed scenic highway or Virginia byway is located shall be given notice and, upon request by any of the local governing bodies, the Board shall hold a hearing in one of the counties or cities wherein the proposed scenic highway or Virginia byway is located.

§ 33.2-406. Selecting Virginia byways.

In selecting a Virginia byway, the Board and the Director of the Department of Conservation and Recreation shall give preference to corridors controlled by zoning or otherwise, so as to reasonably protect the aesthetic or cultural value of the highway.

§ 33.2-407. Signage of scenic highways and Virginia byways.

When the Board designates a highway as a scenic highway or as a Virginia byway, it shall be appropriately signed as such.

§ 33.2-408. Acquisition of adjacent land.

When the Board has designated a highway as a Virginia byway or as a scenic highway, the Commissioner of Highways may acquire by gift or purchase such land, or interests therein, of primary importance for the preservation of natural beauty adjacent to Virginia byways or scenic highways.

§ 33.2-409. Duty of owner or occupier of dam over which state highway passes; penalty.

Every owner or occupier of a dam over which a state highway passes shall keep such dam in good order, at least 12 feet wide at the top, and also keep in good order the substructure of a bridge of like width over the pier heads, floodgates, or any wastecut through or around the dam, provided that when these requirements have been met, the superstructure of any such bridge shall be maintained by the Commissioner of Highways. The Commissioner of Highways shall inspect all such bridges and report any needed repairs to the owner in writing. If such owner fails to comply with the provisions of this chapter, he is guilty of a misdemeanor punishable by a fine of $2 for every such failure of 24 hours. However, if a milldam is carried away or destroyed by flood or any other extraordinary natural cause, the owner or occupier thereof shall not be subject to such fine until one month after any mill operated in whole or in part by water impounded by such dam has been put into operation by such waterpower.

§ 33.2-410. Duties of Commissioner of Highways related to dams over which a state highway passes.

The Commissioner of Highways may, at his own cost and expense, widen or strengthen any dam or bridge over which a state highway passes to a sufficient width to provide properly for traffic that uses that section of highway of which such dam or bridge forms a part. The Commissioner of Highways shall maintain the highway surface on such sections of highway.

§ 33.2-411. Raising or lowering floodgates.

The owner or occupier of a dam shall raise or lower the floodgates on such dam when there is an impending flood in order to reduce the level of the water in the pond, and when it comes to the attention of the Commissioner of Highways that this has not been done, or that the owner is unable to reach the spillway in order to do so, the Commissioner of Highways may perform this duty.

§ 33.2-412. Reconstruction if dam is washed out.

If a dam is washed out and the owner refuses to replace the dam, the Commissioner of Highways, with or without the consent of such owner or occupier, may construct a highway across the dam, but in case the owner desires to replace the dam and use the pond, he shall be permitted to do so by paying to the Commissioner of Highways one-half of the cost and expenses of replacing the dam, up to a width of 12 feet at the top, and the difference between the cost, if any, of replacing the bridge normally required to carry the water of the stream and the cost of a bridge that includes floodgates and adequate spillway.

§ 33.2-413. When larger spillway required.

In case the earthen portion of a dam has been washed away and it is determined by the Commissioner of Highways that the washout was caused by a spillway of insufficient opening to carry floodwater, the dam shall not be restored for the purpose of impounding water unless the owner or occupier agrees with the Commissioner of Highways to the construction of a spillway with adequate opening, conforming to plans and specifications of the Department. In the event that such construction is required, the Commissioner of Highways shall be responsible for such part of the cost as would be necessary to provide a bridge with sufficient opening to carry the floodwater of the stream, and the owner or occupier of the dam shall be required to pay the difference in cost, if any, of providing adequate floodgates and spillways in addition to the bridge.

§ 33.2-414. Application to county roads.

Sections 33.2-409 through 33.2-413 shall also apply to dams, over which pass public roads that are not in the primary or secondary state highway system, and to the owners and occupiers thereof. As to any such dam and the owner or occupier thereof, the powers conferred and imposed upon the Commissioner of Highways in §§ 33.2-409 through 33.2-413 shall be vested in and imposed upon the governing body of the county in which such dam is located.

CHAPTER 5.

HIGH-OCCUPANCY VEHICLE LANES AND HIGH-OCCUPANCY TOLL LANES.

§ 33.2-500. Definitions.

As used in this chapter, unless the context requires a different meaning:

"High-occupancy requirement" means the number of persons required to be traveling in a vehicle for the vehicle to use HOT lanes without the payment of a toll. Emergency vehicles, law-enforcement vehicles using HOT lanes in the performance of their duties, which shall not include the use of such vehicles for commuting to and from the workplace, and mass transit vehicles and commuter buses shall meet the high-occupancy requirement for HOT lanes, regardless of the number of occupants in the vehicle.

"High-occupancy toll lanes" or "HOT lanes" means a portion of a highway containing one or more travel lanes separated from other lanes that has an electronic toll collection system, provides for free passage by vehicles that meet the high-occupancy requirement, and contains a photo-enforcement system for use in such electronic toll collection. HOT lanes shall not be a "toll facility" or "HOV lanes" for the purposes of any other provision of law or regulation.

"High-occupancy vehicle lanes" or "HOV lanes" means a portion of a highway containing one or more travel lanes for the travel of high-occupancy vehicles or buses as designated pursuant to § 33.2-320.

"HOT lanes operator" means the operator of the facility containing HOT lanes, which may include the Department of Transportation or some other entity.

"Mass transit vehicles" and "commuter buses" means vehicles providing a scheduled transportation service to the general public. Such vehicles shall comprise nonprofit, publicly or privately owned or operated transportation services, programs, or systems that may be funded pursuant to § 58.1-638.

"Owner" means the registered owner of a vehicle on record with the Department of Motor Vehicles or with the equivalent agency in another state. "Owner" does not mean a vehicle rental or vehicle leasing company.

"Photo-enforcement system" means a sensor installed in conjunction with a toll collection device to detect the presence of a vehicle that automatically produces one or more photographs, one or more microphotographs, a videotape, or other recorded images of each vehicle's license plate at the time it is detected by the toll collection device.

"Unauthorized vehicle" means a motor vehicle that is restricted from use of the HOT lanes pursuant to subdivision 4 a of § 33.2-503.

§ 33.2-501. Designation of HOV lanes; use of such lanes; penalties.

A. In order to facilitate the rapid and orderly movement of traffic to and from urban areas during peak traffic periods, the Board may designate one or more lanes of any highway in the Interstate System, primary state highway system, or secondary state highway system as HOV lanes. When lanes have been so designated and have been appropriately marked with signs or other markers as the Board may prescribe, they shall be reserved during periods designated by the Board for the exclusive use of buses and high-occupancy vehicles. Any local governing body may also, with respect to highways under its exclusive jurisdiction, designate HOV lanes and impose and enforce restrictions on the use of such lanes. Any highway for which the locality receives highway maintenance funds pursuant to § 33.2-319 shall be deemed to be within the exclusive jurisdiction of the local governing body for the purposes of this section. HOV lanes shall be reserved for high-occupancy vehicles of a specified number of occupants as determined by the Board or, for HOV lanes designated by a local governing body, by that local governing body. Notwithstanding the foregoing provisions of this section, no designation of any lane or lanes of any highway as HOV lanes shall apply to the use of any such lanes by:

1. Emergency vehicles such as firefighting vehicles, ambulances, and rescue squad vehicles;

2. Law-enforcement vehicles;

3. Motorcycles;

4. a. Transit and commuter buses designed to transport 16 or more passengers, including the driver;

b. Any vehicle operating under a certificate issued under § 46.2-2075, 46.2-2080, 46.2-2096, 46.2-2099.4, or 46.2-2099.44;

5. Vehicles of public utility companies operating in response to an emergency call;

6. Vehicles bearing clean special fuel vehicle license plates issued pursuant to § 46.2-749.3, provided such use is in compliance with federal law;

7. Taxicabs having two or more occupants, including the driver; or

8. (Contingent effective date) Any active duty military member in uniform who is utilizing Interstate 264 and Interstate 64 for the purposes of traveling to or from a military facility in the Hampton Roads Planning District.

In the Hampton Roads Planning District, HOV restrictions may be temporarily lifted and HOV lanes opened to use by all vehicles when restricting use of HOV lanes becomes impossible or undesirable and the temporary lifting of HOV limitations is indicated by signs along or above the affected portion of highway.

The Commissioner of Highways shall implement a program of the HOV facilities in the Hampton Roads Planning District beginning not later than May 1, 2000. This program shall include the temporary lifting of HOV restrictions and the opening of HOV lanes to all traffic when an incident resulting from nonrecurring causes within the general lanes occurs such that a lane of traffic is blocked or is expected to be blocked for 10 minutes or longer. The HOV restrictions for the facility shall be reinstated when the general lane is no longer blocked and is available for use.

The Commissioner of Highways shall maintain necessary records to evaluate the effects of such openings on the operation of the general lanes and the HOV lanes. This program will terminate if the Federal Highway Administration requires repayment of any federal highway construction funds because of the program's impact on the HOV facilities in Hampton Roads.

B. In designating any lane or lanes of any highway as HOV lanes, the Board or local governing body shall specify the hour or hours of each day of the week during which the lanes shall be so reserved, and the hour or hours shall be plainly posted at whatever intervals along the lanes the Board or local governing body deems appropriate. Any person driving a motor vehicle in a designated HOV lane in violation of this section is guilty of a traffic infraction, which shall not be a moving violation, and on conviction shall be fined $100. However, violations committed within the boundaries of Planning District 8 shall be punishable as follows:

1. For a first offense, by a fine of $125;

2. For a second offense within a period of five years from a first offense, by a fine of $250;

3. For a third offense within a period of five years from a first offense, by a fine of $500; and

4. For a fourth or subsequent offense within a period of five years from a first offense, by a fine of $1,000.

Upon a conviction under this section, the court shall furnish to the Commissioner of the Department of Motor Vehicles in accordance with § 46.2-383 an abstract of the record of such conviction, which shall become a part of the person's driving record. Notwithstanding the provisions of § 46.2-492, no driver demerit points shall be assessed for any violation of this section, except that persons convicted of second, third, fourth, or subsequent violations within five years of a first offense committed in Planning District 8 shall be assessed three demerit points for each such violation.

C. In the prosecution of an offense, committed in the presence of a law-enforcement officer, of failure to obey a road sign restricting a highway, or portion thereof, to the use of high-occupancy vehicles, proof that the vehicle described in the HOV violation summons was operated in violation of this section, together with proof that the defendant was at the time of such violation the registered owner of the vehicle, shall constitute in evidence a rebuttable presumption that such registered owner of the vehicle was the person who committed the violation. Such presumption shall be rebutted if the registered owner of the vehicle testifies in open court under oath that he was not the operator of the vehicle at the time of the violation. A summons for a violation of this section may be executed in accordance with § 19.2-76.2. Such rebuttable presumption shall not arise when the registered owner of the vehicle is a rental or leasing company.

D. Notwithstanding the provisions of § 19.2-76, whenever a summons for a violation of this section is served in any locality, it may be executed by mailing by first-class mail a copy thereof to the address of the owner of the vehicle as shown on the records of the Department of Motor Vehicles. If the summoned person fails to appear on the date of return set out in the summons mailed pursuant to this section, the summons shall be executed in the manner set out in § 19.2-76.3.

No proceedings for contempt or arrest of a person summoned by mailing shall be instituted for his failure to appear on the return date of the summons.

E. Notwithstanding § 33.2-613, high-occupancy vehicles having three or more occupants (HOV-3) may be permitted to use the Omer L. Hirst-Adelard L. Brault Expressway (Dulles Toll Road) without paying a toll.

F. Notwithstanding the contrary provisions of this section, the following conditions shall be met before the HOV-2 designation of Interstate Route 66 outside the Capital Beltway can be changed to HOV-3 or any more restrictive designation:

1. The Department of Transportation shall publish a notice of its intent to change the existing designation and also immediately provide similar notice of its intent to all members of the General Assembly representing districts that touch or are directly impacted by traffic on Interstate Route 66.

2. The Department of Transportation shall hold public hearings in the corridor to receive comments from the public.

3. The Department of Transportation shall make a finding of the need for a change in such designation, based on public hearings and its internal data, and present this finding to the Board for approval.

4. The Board shall make written findings and a decision based upon the following criteria:

a. Is changing the HOV-2 designation to HOV-3 in the public interest?

b. Is there quantitative and qualitative evidence that supports the argument that HOV-3 will facilitate the flow of traffic on Interstate Route 66?

c. Is changing the HOV-2 designation beneficial to comply with the federal Clean Air Act Amendments of 1990?

§ 33.2-502. Designation of HOT lanes.

The Board may designate one or more lanes of any highway, including lanes that may previously have been designated HOV lanes under § 33.2-501, in the Interstate System, primary state highway system, or National Highway System, or any portion thereof, as HOT lanes. In making HOT lanes designations, the Board shall also specify the high-occupancy requirement and conditions for use of such HOT lanes or may authorize the Commissioner of Highways to make such determination consistent with the terms of a comprehensive agreement executed pursuant to § 33.2-1808. The high-occupancy requirement for a HOT lanes facility constructed or operated as a result of the Public-Private Transportation Act (§ 33.2-1800 et seq.) shall not be less than three.

§ 33.2-503. HOT lanes enforcement.

Any person operating a motor vehicle on designated HOT lanes shall make arrangements with the HOT lanes operator for payment of the required toll prior to entering such HOT lanes. The driver of a vehicle who enters the HOT lanes in an unauthorized vehicle, in violation of the conditions for use of such HOT lanes established pursuant to § 33.2-502, without payment of the required toll or without having made arrangements with the HOT lanes operator for payment of the required toll shall have committed a violation of this section, which may be enforced in the following manner:

1. On a form prescribed by the Supreme Court, a summons for civil violation of this section may be executed by a law-enforcement officer, when such violation is observed by such officer. The form shall contain the option for the driver of the vehicle to prepay the unpaid toll and all penalties, administrative fees, and costs.

2. a. A HOT lanes operator shall install and operate, or cause to be installed or operated, a photo-enforcement system at locations where tolls are collected for the use of such HOT lanes.

b. A summons for civil violation of this section may be executed pursuant to this subdivision, when such violation is evidenced by information obtained from a photo-enforcement system as defined in this chapter. A certificate, sworn to or affirmed by a technician employed or authorized by the HOT lanes operator, or a facsimile of such a certificate, based on inspection of photographs, microphotographs, videotapes, or other

recorded images produced by a photo-enforcement system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape, or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation under this subdivision. Any vehicle rental or vehicle leasing company, if named in a summons, shall be released as a party to the action if it provides to the HOT lanes operator a copy of the vehicle rental agreement or lease or an affidavit identifying the renter or lessee prior to the date of hearing set forth in the summons. Upon receipt of such rental agreement, lease, or affidavit, a summons shall be issued for the renter or lessee identified therein. Release of this information shall not be deemed a violation of any provision of the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.) or the Insurance Information and Privacy Protection Act (§ 38.2-600 et seq.).

c. On a form prescribed by the Supreme Court, a summons issued under this subdivision may be executed pursuant to § 19.2-76.2. Such form shall contain the option for the driver or registered owner to prepay the unpaid toll and all penalties, administrative fees, and costs. HOT lanes operator personnel or their agents mailing such summons shall be considered conservators of the peace for the sole and limited purpose of mailing such summons. Notwithstanding the provisions of § 19.2-76, a summons for a violation of this section may be executed by mailing by first-class mail a copy thereof to the address of the owner of the vehicle as shown on the records of the Department of Motor Vehicles or, if the registered owner has named and provided a valid address for the operator of the vehicle at the time of the violation in an affidavit executed pursuant to this subdivision, such named operator of the vehicle. If the summoned person fails to appear on the date of return set out in the summons mailed pursuant to this section, the summons shall be executed in the manner set out in § 19.2-76.3.

d. The registered owner of such vehicle shall be given reasonable notice by way of a summons as provided in this subdivision that his vehicle had been used in violation of this section, and such owner shall be given notice of the time and place of the hearing and notice of the civil penalty and costs for such offense.

Upon the filing of an affidavit with the court at least 14 days prior to the hearing date by the registered owner of the vehicle stating that he was not the driver of the vehicle on the date of the violation and providing the legal name and address of the driver of the vehicle at the time of the violation, a summons will also be issued to the alleged driver of the vehicle at the time of the offense. The affidavit shall constitute prima facie evidence that the person named in the affidavit was driving the vehicle at all the relevant times relating to the matter named in the affidavit.

If the registered owner of the vehicle produces a certified copy of a police report showing that the vehicle had been reported to the police as stolen prior to the time of the alleged offense and remained stolen at the time of the alleged offense, then the court shall dismiss the summons issued to the registered owner of the vehicle.

3. a. The HOT lanes operator may impose and collect an administrative fee in addition to the unpaid toll so as to recover the expenses of collecting the unpaid toll, which administrative fee shall be reasonably related to the actual cost of collecting the unpaid toll and not exceed $100 per violation. The operator of the vehicle shall pay the unpaid tolls and any administrative fee detailed in a notice or invoice issued by a HOT lanes operator. If paid within 30 days of notification, the administrative fee shall not exceed $25.

b. Upon a finding by a court of competent jurisdiction that the driver of the vehicle observed by a law-enforcement officer under subdivision 1 or the vehicle described in the summons for civil violation issued pursuant to evidence obtained by a photo-enforcement system under subdivision 2 was in violation of this section, the court shall impose a civil penalty upon the driver of such vehicle issued a summons under subdivision 1, or upon the driver or registered owner of such vehicle issued a summons under subdivision 2, payable to the HOT lanes operator as follows: for a first offense, $50; for a second offense, $250; for a third offense within a period of two years of the second offense, $500; and for a fourth and subsequent offense within a period of three years of the second offense, $1,000, together with, in each case, the unpaid toll, all accrued administrative fees imposed by the HOT lanes operator as authorized by this section, and applicable court costs. The court shall remand penalties, the unpaid toll, and administrative fees assessed for violation of this section to the treasurer or director of finance of the county or city in which the violation occurred for payment to the HOT lanes operator for expenses associated with operation of the HOT lanes and payments

against any bonds or other liens issued as a result of the construction of the HOT lanes. No person shall be subject to prosecution under both subdivisions 1 and 2 for actions arising out of the same transaction or occurrence.

c. Upon a finding by a court that a person has violated this section, in the event such person fails to pay the required penalties, fees, and costs, the court shall notify the Commissioner of the Department of Motor Vehicles, who shall suspend all of the registration certificates and license plates issued for any motor vehicles registered solely in the name of such person and shall not issue any registration certificate or license plate for any other vehicle that such person seeks to register solely in his name until the court has notified the Commissioner of the Department of Motor Vehicles that such penalties, fees, and costs have been paid. The HOT lanes operator and the Commissioner of the Department of Motor Vehicles may enter into an agreement whereby the HOT lanes operator may reimburse the Department of Motor Vehicles for its reasonable costs to develop, implement, and maintain this enforcement mechanism, and that specifies that the Commissioner of the Department of Motor Vehicles shall have an obligation to suspend such registration certificates so long as the HOT lanes operator makes the required reimbursements in a timely manner in accordance with the agreement.

d. Except as provided in subdivisions 4 and 5, imposition of a civil penalty pursuant to this section shall not be deemed a conviction as an operator of a motor vehicle under Title 46.2 and shall not be made part of the driving record of the person upon whom such civil penalty is imposed, nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage.

4. a. The HOT lanes operator may restrict the usage of the HOT lanes to designated vehicle classifications pursuant to an interim or final comprehensive agreement executed pursuant to § 33.2-1808 or 33.2-1809. Notice of any such vehicle classification restrictions shall be provided through the placement of signs or other markers prior to and at all HOT lanes entrances.

b. Any person driving an unauthorized vehicle on the designated HOT lanes is guilty of a traffic infraction, which shall not be a moving violation, and shall be punishable as follows: for a first offense, by a fine of $125; for a second offense within a period of five years from a first offense, by a fine of $250; for a third offense within a period of five years from a first offense, by a fine of $500; and for a fourth and subsequent offense within a period of five years from a first offense, by a fine of $1,000.

Upon a conviction under this subdivision, the court shall furnish to the Commissioner of the Department of Motor Vehicles, in accordance with § 46.2-383, an abstract of the record of such conviction, which shall become a part of the person's driving record. Notwithstanding the provisions of § 46.2-492, no driver demerit points shall be assessed for any violation of this subdivision, except that persons convicted of a second, third, fourth, or subsequent violation within five years of a first offense shall be assessed three demerit points for each such violation.

5. The driver of a vehicle who enters the HOT lanes by crossing through any barrier, buffer, or other area separating the HOT lanes from other lanes of travel is guilty of a violation of § 46.2-852, unless the vehicle is a state or local law-enforcement vehicle, firefighting truck, ambulance, or rescue squad vehicle used in the performance of its official duties. No person shall be subject to prosecution both under this subdivision and under subdivision 1, 2, or 4 for actions arising out of the same transaction or occurrence.

Upon a conviction under this subdivision, the court shall furnish to the Commissioner of the Department of Motor Vehicles in accordance with § 46.2-383 an abstract of the record of such conviction, which shall become a part of the convicted person's driving record.

6. No person shall be subject to prosecution both under this section and under § 33.2-501, 46.2-819, or 46.2-819.1 for actions arising out of the same transaction or occurrence.

7. Any action under this section shall be brought in the general district court of the county or city in which the violation occurred.

§ 33.2-504. Release of personal information to or by HOT lanes operators; penalty.

A. The HOT lanes operator may enter into an agreement with the Department of Motor Vehicles, in accordance with the provisions of subdivision B 21 of § 46.2-208, to obtain vehicle owner information regarding the registered owners of vehicles that use HOT lanes and with the Department of Transportation to obtain any information that is necessary to conduct electronic toll collection and otherwise operate HOT

lanes. No HOT lanes operator shall disclose or release any personal information received from the Department of Motor Vehicles or the Department of Transportation to any third party, except in the issuance of a summons and institution of court proceedings in accordance with § 33.2-503. Information in the possession of a HOT lanes operator under this section shall be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

B. Information collected by a photo-enforcement system shall be limited exclusively to that information that is necessary for the collection of unpaid tolls. Notwithstanding any other provision of law, all photographs, microphotographs, electronic images, or other data collected by a photo-enforcement system shall be used exclusively for the collection of unpaid tolls and shall not be (i) open to the public; (ii) sold or used for sales, solicitation, or marketing purposes; (iii) disclosed to any other entity except as may be necessary for the collection of unpaid tolls or to a vehicle owner or operator as part of a challenge to the imposition of a toll; or (iv) used in a court in a pending action or proceeding unless the action or proceeding relates to a violation of § 33.2-503 or upon order from a court of competent jurisdiction. Information collected under this section shall be purged and not retained later than 30 days after the collection and reconciliation of any unpaid tolls, administrative fees, or civil penalties. Any entity operating a photo-enforcement system shall annually certify compliance with this section and make all records pertaining to such system available for inspection and audit by the Commissioner of Highways or the Commissioner of the Department of Motor Vehicles or their designee. Any violation of this subsection constitutes a Class 1 misdemeanor. In addition to any fines or other penalties provided for by law, any money or other thing of value obtained as a result of a violation of this section shall be forfeited to the Commonwealth.

§ 33.2-505. Exclusion of HOT lanes from certain other laws.

Notwithstanding any other provision of law, the provisions of §§ 22.1-187, 33.2-501, 33.2-613, 46.2-819, and 46.2-819.1 shall not apply to HOT lanes.

CHAPTER 6.

FERRIES AND TOLL FACILITIES.

§ 33.2-600. Acquisition or establishment of ferries.

The Board may acquire by purchase, condemnation, or gift any ferry within the Commonwealth that forms a connecting link in a state highway and may purchase all equipment and other things necessary for the establishment of new ferries to become connecting links in the primary or secondary state highway system, whenever it shall determine such action to be advisable and expedient. The Board may expend from state highway construction funds of the highway construction district where the ferries are located and are under the Board's control at any time such sums as may be necessary to acquire or establish, maintain, and operate any such ferry.

The Board may operate such ferry either as a free or toll ferry and may establish a toll for the use of such ferry at such rates as are deemed by the Board to be reasonable and proper without regulation by any other governmental body.

§ 33.2-601. Ferry across Corrotoman River.

The public free ferry across the Corrotoman River, in the County of Lancaster, authorized by the act of March 12, 1847, shall be kept according to such act, except as otherwise provided in this section. The Circuit Court of Lancaster may have the contract for keeping the same let to the lowest bidder for a period of five years, and the bonds thereby directed shall be to the County of Lancaster. Furthermore, the ferry shall cross from Merry Point to the upper side of the wharf and canning factory at Ottoman wharf. However, the circuit court of the county shall have the right, upon the application of the board of supervisors, to discontinue the ferry if it appears that public necessity therefor no longer exists. No such application shall be made unless and until notice is given by (i) publication once a week for two successive weeks in a newspaper published in the county or having general circulation therein and (ii) posting copies of the notice at the front door of the courthouse of the county and at both landings of the ferry. Such notice shall be posted and the first newspaper publication made at least 30 days before the day on which the application will be made to the court.

§ 33.2-602. Toll bridges; when privilege ceases.

When an act is passed to authorize the erection of a toll bridge, if the work is not commenced within one year from the passage of such act or is not completed within two years after such commencement or if, after its

completion, there is an abandonment of the toll bridge or a failure for three successive years to keep it in good order, the privileges granted by the act shall cease.

§ 33.2-603. Toll bridges not to obstruct navigation or fish.

Every toll bridge shall be made so as not to obstruct the passage of fish or the navigation of the watercourse over which it is erected.

§ 33.2-604. How right to demand tolls ascertained and rates fixed or changed.

Tolls shall be received for passing a bridge only after it appears to the circuit court of the county where the bridge is located that the bridge is completed according to the act authorizing it. The court shall ascertain whether it is so completed by appointing three disinterested freeholders to view it. If they report in writing that it is so completed and their report is confirmed by the court, the person authorized to erect it, or his heirs or assigns, may then demand and receive tolls at the rates fixed by such act from persons or things passing over the bridge. If no rates are fixed, then he, or his heirs or assigns, may receive tolls at such rates as may be fixed by law. If the toll rates are specified in such act they may be changed by law, unless such act otherwise expressly provides.

§ 33.2-605. Special police officers in connection with toll bridges.

A. The circuit court of any county in which there is a toll bridge or its approaches, or the circuit court of any county in which lies any part of any toll bridge or bridges or their approaches belonging to the same proprietor, but which toll bridge or bridges or their approaches lie in more than one county, may, upon the application of the proprietor, appoint any employee of such proprietor, employed in the control or operation of such toll bridge or bridges and approaches, a special police officer. Such special police officer may exercise all the powers and duties imposed and conferred upon sheriffs in the Commonwealth, in criminal matters, upon any such toll bridge or bridges and their approaches. Such power shall extend throughout the Commonwealth when such special police officer is actually in pursuit of a person accused of crime or acting under authority of a warrant duly issued for the arrest of a person charged with a crime. However, no special policeman appointed under this section whose duties as such special policeman are merely incidental to such private employment shall be deemed to be an employee of the Commonwealth or county or counties within which such toll bridges and their approaches lie, within the meaning of the Virginia Workers' Compensation Act (§ 65.2-100 et seq.).

B. Before any such appointment is made, the court shall be satisfied that such person has been a bona fide resident of the Commonwealth for more than one year immediately preceding such appointment and is of good moral character. Before any such person shall be permitted to discharge any of the duties of such special policeman, he shall take the oath required by law and shall give a bond payable to the Commonwealth in the penalty of not less than $500, conditioned for the faithful discharge of his official duties.

C. No salary shall be paid to any special police officer appointed under subsection A by the Commonwealth or county, or counties, in which such properties lie; nor shall he receive any fees for making any arrest, executing any warrant, summoning a witness, or carrying a person to or from jail.

§ 33.2-606. Permission required to erect or maintain toll bridges over navigable water.

No toll bridge erected after March 19, 1928, shall be constructed, maintained, or operated across, in, or over any navigable waters in or of the Commonwealth, anything in the charter of any company to the contrary notwithstanding, unless a permit is first obtained from the Board. The Board may grant or withhold such permit or prescribe its terms and conditions, as it may deem for the best interest of the Commonwealth, except so far as such terms and conditions are provided for in this chapter.

§ 33.2-607. Approval of plans by Board; inspection; costs.

Detailed plans, estimates, and specifications shall be submitted to the Board for approval before construction is commenced on a toll bridge or approaches under a permit granted under § 33.2-606. No such toll bridge shall be constructed until such plans, estimates, and specifications are approved by the Board. Access to such work shall be granted to the Board, the Commissioner of Highways, and authorized representatives of either at all times during construction. The permittee shall keep accurate records of the cost of such toll bridge and approaches and real and personal property used in the operation thereof and of all replacements and repairs and shall submit a copy to the Board.

§ 33.2-608. Toll bridges may be purchased by Commonwealth.

In addition to the power of eminent domain as provided by law for highways in the primary state highway system, the Commonwealth, acting through the Commissioner of Highways, may purchase any such toll bridge and the approaches thereto with the real estate and tangible personal property necessary for their proper operation, at such time as may be specified in the permit granted for such toll bridge, or at the expiration of any two-year period after such time, all at a price equal to the original cost, to be determined as provided in this section, less depreciation.

In order to exercise the right of the Commonwealth to purchase and take over any such toll bridge and approaches and real estate and tangible personal property, the Commonwealth, through the Commissioner of Highways, shall give to the permittee, or its successor in title of record to such toll bridge and other property, not less than two months' notice of its intention to do so and specify the date on which the conveyance will be required. Title to such toll bridge and approaches and property shall be vested in the Commonwealth free of lien at the time set out in such notice and upon the payment or offer of the purchase price determined in accordance with §§ 33.2-602 through 33.2-610, to such permittee or successor in title of record to such toll bridge and other property, or to the trustee or trustees, or mortgagor or mortgagees in any deed of trust or mortgage on such property, or to the lien creditor or creditors, as their interest may appear of record.

The original cost of such toll bridge and approaches and real estate and tangible personal property shall be determined by the Commissioner of Highways. The original cost shall include the actual cost and an additional amount equal to interest at the rate of six percent on the amount actually invested by such permittee, or successor in title of record, in such property, or in hand for investment therein, during the period of construction. "Actual costs" includes the cost of improvements; financing charges; the cost of traffic estimate and of engineering and legal expenses, plans, specifications, and surveys; estimates of cost and of revenue; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expenses; and such other expenses as may be necessary or incident to the financing of the project and the placing of the project in operation. The Commissioner of Highways shall determine the depreciation and the reasonableness of each item of actual cost.

§ 33.2-609. Conveyance of toll bridge by Commonwealth.

In the event a toll bridge, at the time it is purchased by the Commonwealth under the provisions of §§ 33.2-602 through 33.2-610, is not on the line of a highway then in one of the systems of state highways, the Commissioner of Highways may convey such toll bridge and approaches and other property to such county or counties in which it may be in whole or in part located, upon the payment by such county or counties of the amount paid by the Commonwealth for such toll bridge and approaches and other property, with interest on such amount at six percent per year from the time of such payment by the Commonwealth. The conveyance shall be executed in the name and on behalf of the Commonwealth by the Commissioner of Highways.

§ 33.2-610. Sections 33.2-606 through 33.2-609 not applicable to certain toll bridges.

Nothing contained in §§ 33.2-606 through 33.2-609 shall be construed to apply to any bridge existing or under construction on March 20, 1928, or to bridges constructed within or adjacent to towns or cities having a population of more than 3,500.

§ 33.2-611. Tolls may vary to encourage travel during off-peak hours.

A. In order to provide an incentive for motorists to travel at off-peak hours, and in accordance with federal requirements, wherever a toll is imposed and collected by the Department or such other entity as may be responsible for imposing or collecting such toll, the amount of such toll may vary according to the time of day, day of the week, traffic volume, vehicle speed, vehicle type, similar variables, or combinations thereof. The amount of such toll and the time of day when such toll changes shall be as fixed and revised by the Board or such other entity as may be responsible for fixing or revising the amount of such toll, provided, however, that any such variation shall be reasonably calculated to minimize the reduction in toll revenue generated by such toll.

B. 1. Beginning July 1, 2008, every agency of the Commonwealth or any political subdivision or instrumentality thereof having control of or day-to-day responsibility for the operation of any toll facility in the Commonwealth shall take all necessary actions to ensure that every newly constructed toll facility under its control is capable of fully automated electronic operation, employing technologies and procedures that

permit the collection of tolls from users of the facility, to the extent possible, without impeding the traffic flow of the facility. An entity operating a toll facility that substantially upgrades its equipment or substantially renovates its facility after July 1, 2008, shall comply with the provisions of this subsection. The provisions of this section shall also apply to any nongovernmental or quasigovernmental entity operating a toll facility under a comprehensive agreement entered into, pursuant to the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.), on or after January 1, 2008. Nothing in this subsection shall be construed to prohibit a toll facility from retaining means of nonautomated toll collection in some lanes of the facility.

2. For toll facilities within the territory embraced by the Northern Virginia Transportation Authority, the provisions of subdivision 1 apply to all toll facilities, regardless of whether or not they are newly constructed or substantially upgraded.

§ 33.2-612. Unlawful for Department of Transportation to permit free passage over certain toll bridges and ferries; exceptions.

Except for those persons exempted from tolls under § 33.2-613, it shall be unlawful for the Department or any employee thereof to give or permit free passage over any toll bridge, tunnel, or ferry that has been secured through the issuance of revenue bonds and which bonds are payable from the revenues of such project. Every vehicle shall pay the same toll as others similarly situated. Except as provided in § 33.2-613, the provisions hereof shall apply to vehicles and employees of the state government, local governments, or other political subdivisions and to vehicles and persons of all other categories and descriptions, public, private, eleemosynary, or otherwise.

§ 33.2-613. Free use of toll facilities by certain state officers and employees; penalties.

A. Vehicles transporting two or more persons, including the driver, may be permitted toll-free use of the Dulles Toll Road during rush hours by the Board; however, notwithstanding the provisions of subdivision B 1 of § 56-543 said vehicles shall not be permitted toll-free use of a roadway as defined pursuant to the Virginia Highway Corporation Act of 1988 (§ 56-535 et seq.). Upon presentation of a toll pass issued pursuant to regulations promulgated by the Board, the following persons may use all toll bridges, toll ferries, toll tunnels, and toll roads in the Commonwealth without the payment of toll while in the performance of their official duties:

1. The Commissioner of Highways;

2. Members of the Commonwealth Transportation Board;

3. Employees of the Virginia Department of Transportation;

4. The Superintendent of the Department of State Police;

5. Officers and employees of the Department of State Police;

6. Members of the Alcoholic Beverage Control Board;

7. Employees of the regulatory and hearings divisions of the Department of Alcoholic Beverage Control and special agents of the Department of Alcoholic Beverage Control;

8. The Commissioner of the Department of Motor Vehicles;

9. Employees of the Department of Motor Vehicles;

10. Local police officers;

11. Sheriffs and their deputies;

12. Regional jail officials;

13. Animal wardens;

14. The Director and officers of the Department of Game and Inland Fisheries;

15. Persons operating firefighting equipment and ambulances owned by a political subdivision of the Commonwealth or a nonprofit association or corporation;

16. Operators of school buses being used to transport pupils to or from schools;

17. Operators of (i) commuter buses having a capacity of 20 or more passengers, including the driver, and used to regularly transport workers to and from their places of employment and (ii) public transit buses;

18. Employees of the Department of Rail and Public Transportation;

19. Employees of any transportation facility created pursuant to the Virginia Highway Corporation Act of 1988; and

20. Law-enforcement officers of the Virginia Marine Resources Commission.

B. Notwithstanding the provision of subsection A requiring presentation of a toll pass for toll-free use of such facilities, in cases of emergency and circumstances of concern for public safety on the highways of the Commonwealth, the Department of Transportation shall, in order to alleviate an actual or potential threat or risk to the public's safety, facilitate the flow of traffic on or within the vicinity of the toll facility by permitting the temporary suspension of toll collection operations on its facilities.

1. The assessment of the threat to public safety shall be performed and the decision temporarily to suspend toll collection operations shall be made by the Commissioner of Highways or his designee.

2. Major incidents that may require the temporary suspension of toll collection operations shall include (i) natural disasters such as hurricanes, tornadoes, fires, and floods; (ii) accidental releases of hazardous materials such as chemical spills; (iii) major traffic accidents, such as multivehicle collisions; and (iv) other incidents deemed to present a risk to public safety.

3. In any judicial proceeding in which a person is found to be criminally responsible or civilly liable for any incident resulting in the suspension of toll collections as provided in this subsection, the court may assess against the person an amount equal to lost toll revenue as a part of the costs of the proceeding and order that such amount, not to exceed $2,000 for any individual incident, be paid to the Department of Transportation for deposit into the toll road fund.

C. Any tollgate keeper who refuses to permit the persons listed in subsection A to use any toll bridge, toll ferry, toll tunnel, or toll road upon presentation of such a toll pass is guilty of a misdemeanor punishable by a fine of not more than $50 and not less than $2.50. Any person other than those listed in subsection A who exhibits any such toll pass for the purpose of using any toll bridge, toll ferry, toll tunnel, or toll road is guilty of a Class 1 misdemeanor.

D. Any vehicle operated by the holder of a valid driver's license issued by the Commonwealth or any other state shall be allowed free use of all toll bridges, toll roads, and other toll facilities in the Commonwealth if:

1. The vehicle is specially equipped to permit its operation by a handicapped person;

2. The driver of the vehicle has been certified, either by a physician licensed by the Commonwealth or any other state or by the Adjudication Office of the U.S. Department of Veterans Affairs, as being severely physically disabled and having permanent upper limb mobility or dexterity impairments that substantially impair his ability to deposit coins in toll baskets;

3. The driver has applied for and received from the Department of Transportation a vehicle window sticker identifying him as eligible for such free passage; and

4. Such identifying window sticker is properly displayed on the vehicle.

A copy of this subsection shall be posted at all toll bridges, toll roads, and other toll facilities in the Commonwealth. The Department of Transportation shall provide envelopes for payments of tolls by those persons exempted from tolls pursuant to this subsection and shall accept any payments made by such persons.

E. Nothing contained in this section or in § 33.2-612 or 33.2-1718 shall operate to affect the provisions of § 22.1-187.

F. Notwithstanding the provisions of subsections A, B, and C, only the following persons may use the Chesapeake Bay Bridge-Tunnel, facilities of the Richmond Metropolitan Authority, or facilities of an operator authorized to operate a toll facility pursuant to the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) without the payment of toll when necessary and incidental to the conduct of official business:

1. The Commissioner of Highways;

2. Members of the Commonwealth Transportation Board;

3. Employees of the Department of Transportation;

4. The Superintendent of the Department of State Police;

5. Officers and employees of the Department of State Police;

6. The Commissioner of the Department of Motor Vehicles;

7. Employees of the Department of Motor Vehicles; and

8. Sheriffs and deputy sheriffs.

G. Any vehicle operated by a quadriplegic driver shall be allowed free use of all toll facilities in Virginia controlled by the Richmond Metropolitan Authority, pursuant to the requirements of subdivisions D 1 through 4.

§ 33.2-614. Disclosure of certain information relating to use of toll facilities; injunctive relief; attorney fees.

A. Neither the Department nor any other operator of any toll bridge, toll road, or other toll facility nor any employee or contractor with the Department or other toll facility operator shall disclose any information derived from an automated electronic toll collection system about the time, date, or frequency of use or nonuse of any such facility by any individually identified motor vehicle except when ordered to do so by a court of competent jurisdiction. The provisions of this section shall not apply to information supplied (i) to any person who is a participant in the electronic toll collection system, when such information is limited to vehicles owned or leased by such person; (ii) to the issuer of any credit card or debit card or other third party vendor when such information is necessary for collecting the toll and ensuring the accuracy of such billing by the operator; (iii) for statistical or research purposes, when such information contains no data attributable to individual vehicles or individual participants; or (iv) to federal, state, and local law enforcement, when such information is required in the course of an investigation where time is of the essence in preserving and protecting human life or public safety.

B. Any aggrieved person may institute a proceeding for injunction or mandamus against any person, governmental agency, or other entity that has engaged, is engaged, or is about to engage in any acts or practices in violation of the provisions of this section. The proceeding shall be brought in the circuit court of any county or city wherein the person, governmental agency, or other entity made defendant resides or has a place of business. In the case of any successful proceeding by an aggrieved party, the person, governmental agency, or other entity enjoined or made subject to a writ of mandamus by the court shall be liable for the costs of the action together with reasonable attorney fees as determined by the court.

CHAPTER 7.

LOCAL AUTHORITY OVER HIGHWAYS.

Article 1.

General Provisions.

§ 33.2-700. Transfer of highways, etc., from secondary state highway system to local authorities.

Whenever any town has a population of more than 3,500 inhabitants, all the streets, highways, causeways, bridges, landings, and wharves in such town that were incorporated within the secondary state highway system shall be eliminated from such system and the control and jurisdiction over them shall be vested in the local authorities. This section shall in no way affect the rights of such towns to receive the benefits provided elsewhere in this title.

§ 33.2-701. Levies.

The governing bodies of the counties shall not make any levy of county or district road taxes or contract any further indebtedness for the construction, maintenance, or improvement of highways; however, the governing bodies of the counties shall continue to make county or district levies, as the case may be, upon all real and personal property subject to local taxation, in such county or magisterial district, and not embraced within the corporate limits of any town that maintains its own streets and is exempt from county and district road taxes unless the citizens of such towns voted on the question of issuing county or district road bonds, sufficient only to provide for the payment of any bonded or other indebtedness and for the interest contracted thereon that may be outstanding as an obligation of any county or district contracted for road purposes or for the sinking fund for the retirement of any bonded indebtedness established for county or district road purposes.

For the purpose of this section, "district" means a magisterial, sanitary, or other special district created by the governing body of a county for the levy of road taxes.

§ 33.2-702. Gifts received by counties for construction, maintenance, etc., of secondary highways.

Notwithstanding the provisions of § 33.2-701 or any other provisions of law to the contrary, the governing body of any county may accept gifts of money, property, or services to be utilized for the construction, maintenance, and improvement of the secondary state highway system in such county, in conformity with specifications of and in cooperation with the Department, provided that such gift resources may be matched in value by appropriations from the county's general funds. The allocation of such donated and appropriated resources to the secondary highways shall be made by the governing body of the county, after consultation

with the Department, to be used by the Department in accordance with the wishes of the governing body of such county.

§ 33.2-703. Funds for highways not in secondary state highway system.

Notwithstanding the provisions of § 33.2-701 or 33.2-706, the governing body of any county under the urban county executive form of government may expend funds on minor improvements and maintenance of highways not within the secondary state highway system, provided such highways are open for public use. A highway shall be determined to be open for public use by applying the same standards set forth in § 33.2-105 or by final order of a court of competent jurisdiction on or before January 1, 1978, except that in order to be eligible for funds under this section such highways need not be 30 feet wide but shall not be less than 15 feet wide. The maximum amount of mileage to be maintained under this section shall not exceed 30 miles.

§ 33.2-704. Agreements between localities for construction and operation of toll facilities.

The governing bodies of adjacent localities may enter into agreements providing for the construction and operation of highways, bridges, and ferries within their boundaries and for the imposition and collection of tolls for the use of such facilities. Such tolls may be in whatever amount, subject to whatever conditions, and expended for whatever purposes provided for in such agreements. Such agreements shall provide for the design, land acquisition, or construction of primary or secondary highway projects that have been included in the six-year plan pursuant to § 33.2-331, or in the case of a primary highway, an approved project included in the six-year improvement program of the Board. Such agreements shall specify relevant procedures and responsibilities concerning the design, right-of-way acquisition, construction, and contract administration of such projects. Any facility constructed pursuant to the authority granted in this section shall be constructed in accordance with the applicable standards of the Department for such facility. Prior to executing any agreement pursuant to this section, a joint public hearing shall be held concerning the benefits of and need for as well as the location and design of the facility.

Article 2.

Establishment, Alteration, and Discontinuance of Highways.

§ 33.2-705. Continuance of powers of county authorities; alternative procedure.

The local authorities shall continue to have the powers vested in them on June 20, 1932, for the establishment of new highways in their respective counties, which shall, upon such establishment, become parts of the secondary state highway system within such counties. They shall likewise have the power to alter or change the location of any highway now in the secondary state highway system within such counties or that may hereafter become a part of the secondary state highway system within such counties. The Commissioner of Highways shall be made a party to any proceeding before the local authorities for the establishment of any such highway or for the alteration or change of the location of any such highway. When any such board or commission appointed by the governing body of a county to view a proposed highway or to alter or change the location of an existing highway shall award damages for the right-of-way for the same, in either case to be paid in money, it may be paid by the governing body of the county out of the general county levy funds. No expenditure by the Commonwealth shall be required upon any new highway so established or any old road the location of which is altered or changed by the local authorities, except as may be approved by the Commissioner of Highways. If the property sought to be taken is for the easement or right-of-way, the plat shall reasonably indicate thereon any appurtenant right-of-way or easement for ingress and egress to and from the principal easement or right-of-way being taken.

As an alternative to the method of establishing or relocating a highway provided in the preceding paragraph, the Commissioner of Highways, by and with the approval of the Board and the governing body of a county, shall have power and authority to make such changes in routes in, and additions to, the secondary state highway system as the public safety or convenience may require.

The service of any process or notice in any such proceedings upon the district administrator of the Department having the supervision of maintenance and construction of highways in any such county shall be termed sufficient service on the Commissioner of Highways.

§ 33.2-706. How highways and bridges in counties established or altered; examination and report; width and grade of highways; employing engineer.

Whenever the governing body of any county is of the opinion that it is necessary to establish or alter the location of a public highway or bridge, or any other person applies to the local governing body therefor, it may appoint five viewers, who shall be resident freeholders of the county, any three of whom may act, to examine such highways or routes and report upon the expediency of establishing or altering the location of such public highway or bridge. In lieu of such viewers, the local governing body may direct the county road engineer or county road manager to examine such highway or route and make such report, and such board may establish or alter such highway or bridge upon such location and of such width and grade as it may prescribe. The right-of-way for any public highway shall not be less than 30 feet wide, except that in any case in which the cost of constructing and maintaining any such highway is to be borne by any individual the right-of-way for such highway may be less than 30 but not less than 15 feet in width. If none of the viewers is an engineer, appointed for the purpose of making survey and map, the local governing body may employ an engineer, if necessary, to assist the viewers.

§ 33.2-707. Duty of viewers.

The viewers or the county road engineer or county road manager shall, as early as practicable after receiving the order of the local governing body, proceed to make the view and may examine routes and locations other than that proposed and if of the opinion that there is a necessity to establish or alter the location of the public highway or bridge shall locate the same and make a report to the local governing body that includes a map or diagram of the location made and that states:

1. Their reasons for preferring the location made;

2. The probable cost of establishing or altering the location of such highway or bridge;

3. The convenience and inconvenience that will result to individuals as well as to the public;

4. Whether the highway or bridge will be one of such mere private convenience as to make it proper that it should be opened, established, or altered and kept in order by the person for whose convenience it is desired;

5. Whether any yard, garden, or orchard will have to be taken;

6. The names of the landowners on such route;

7. Which of such landowners require compensation;

8. What will be a just compensation to the landowners requiring compensation for the land so taken and for the damages to the residue of the tract, if any, beyond the peculiar benefits to be derived in respect to such residue, from the highway or bridge to be established; and

9. All other facts and circumstances in their opinion useful in enabling the local governing body to determine the expediency of establishing or altering the highway or bridge.

They shall file such report with the clerk of the local governing body.

§ 33.2-708. Pay to viewers, commissioners, and engineers.

A statement in writing showing the number of days each viewer or commissioner and engineer, appointed or employed under the provisions of this article, was employed shall be sworn to and presented to the governing body, and the governing body may allow a reasonable compensation not exceeding $50 per day to each viewer or commissioner and not exceeding $7.50 per day and necessary traveling expenses for the engineer, provided that in any county adjoining a county having a population in excess of 1,000 per square mile and in the County of Henrico, the governing body may pay the viewers, commissioners, and engineers in addition to expenses not exceeding $25 a day for each day they were respectively employed hereunder.

§ 33.2-709. Consent of landowners.

In the event that some of the landowners do not require compensation and will execute their written consent giving the right-of-way in question, the viewers or the county road engineer or county road manager shall obtain such consent and return it with the report to the local governing body, and such written consent shall operate and have the force and effect of a deed from the landowners of the county for the right-of-way so long as it is used by the public, in case the highway is established, and it shall be recorded in the deed books of the county.

Should any of the landowners require compensation and not unite in such deed, the subsequent proceedings shall be as prescribed in this article.

§ 33.2-710. Proceedings on report; notice to owners.

At the next meeting of the local governing body after receipt of such report, as provided in § 33.2-707, unless the opinion of the local governing body is against establishing or altering the highway or bridge, the local governing body shall require its clerk to give written notice to the owner of the land on which it is proposed to establish or alter such highway or bridge at least five days before the hearing to be held under § 33.2-712 informing the owner of the time and place of the hearing at which he may appear and present his views. Notice sent by registered or certified mail to the last known address of such owner as shown on the current real estate tax assessment books shall be deemed adequate compliance with this requirement. If the hearing is continued, notice shall be mailed again. If the current real estate tax assessment books do not contain the name of the owner of the affected land, notice of the hearing shall be published once each week for four successive weeks in a newspaper having general circulation in the county.

§ 33.2-711. Guardian ad litem for persons under disability.

If any such owner or proprietor is a person under a disability as defined in § 8.01-2, the circuit court of the county shall, at the time the clerk shall issue such process, or as soon thereafter as practicable, upon the court's or judge's own motion, or upon the suggestion of any party in interest, appoint for such person a guardian ad litem, who shall faithfully represent the interest of the person under a disability and whose fees shall be fixed by the court or judge making the appointment.

§ 33.2-712. Defense allowed; what board may do.

Upon the return of the process duly executed, defense may be made to the proceedings by any party and the local governing body may hear testimony touching the expediency or propriety of establishing or altering the highway or bridge. Upon such hearing, the local governing body shall fix just compensation to the proprietors and tenants for the land proposed to be taken and the damage accruing therefrom, unless the local governing body is of the opinion that the highway or bridge should not be established or altered in which case it shall so order.

§ 33.2-713. Appointment of commissioners to assess damages.

If a tenant or proprietor desires or if the local governing body sees cause, the local governing body shall appoint five disinterested resident freeholders of the county as commissioners, any three of whom may act to ascertain just compensation for the land to be taken for such highway or bridge and damages, if any, to the residue, beyond the benefits to be derived by such residue, from such highway or bridge.

§ 33.2-714. Enhancement in value of residue.

The enhancement, if any, in value of the residue by reason of the establishment or alteration of such highway or bridge shall be offset against the damage to the residue, but there shall be no recovery over against such landowner for any excess nor shall enhancement be offset against the value of land taken.

§ 33.2-715. Action of commissioners; report.

The commissioners shall meet on the lands of the proprietors and tenants that are named in the order of the local governing body at a specified place and day, of which notice shall be given by the sheriff to such proprietors and tenants or their agents. Notice need not be given to any person present at the time the order is made. Any one or more of the commissioners attending on the land may adjourn, from time to time, until their business is finished. The commissioners, in the discharge of their duties, shall comply in all respects with the provisions of Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 so far as applicable. They shall promptly make their report as required by § 25.1-232 to the local governing body and, unless good cause is shown against the report, it shall be confirmed. If, however, good cause is shown against the report or the commissioners report their disagreement or fail to report within a reasonable time, the local governing body may appoint other commissioners to ascertain the compensation and damages. When any report is confirmed, the local governing body shall establish or alter the highway or bridge with or without gates, as it may seem proper, and provide for the payment of the compensation and damages allowed.

§ 33.2-716. Appeal to circuit court.

If an applicant, proprietor, or tenant is not satisfied with the decision of the local governing body with respect to the amount of compensation or damages allowed, he may appeal, but only on the question of compensation and damages, to the circuit court of the county, provided such appeal is filed within 60 days. The court shall hear the matter de novo as to the amount of compensation and damages with the further right

of appeal as provided by general law. Upon the hearing of the appeal, the court shall ascertain the amount of compensation and damages, if any, to which such proprietor is entitled, and shall certify the same to the local governing body, which shall proceed to carry out the judgment of the court, provided that the local governing body shall be summoned to appear at the hearing of the appeal.

§ 33.2-717. Who shall pay costs, compensation, and damages.

When the highway or bridge is established or altered, the county shall be chargeable with the compensation and damages to the proprietor or tenant and all costs incurred in the proceedings, provided that when the record shows that the sum allowed by the circuit court on appeal, as compensation and damages to any proprietor or tenant is not more than the amount allowed by the local governing body from whose decision the appeal was taken, such proprietor or tenant shall be adjudged to pay the costs occasioned by such appeal. When the local governing body decides against the application to establish or alter a highway or bridge, the applicant shall pay the costs incurred in the case, except the compensation of the viewers.

But when it shall appear to the local governing body that the opening and establishing or altering of such highway will be for mere private convenience, then the local governing body may order the same upon condition that such applicant pay, in whole or in part, the compensation and damages to the proprietor or tenant and the costs of the proceedings and keep the highway in order. In any such case the highway shall not be opened and established or altered until such compensation and damages and costs has been first paid or the written consent of the proprietor or tenant has been given.

§ 33.2-718. Highways not to be established through cemetery or seminary of learning without owners' consent.

No highway shall be established upon or through the lands of any cemetery or through the lands of any seminary of learning without the consent of the owners thereof.

§ 33.2-719. Abandonment of certain highways and railway crossings.

The governing body of any county that has chosen or hereafter chooses not to be included in the provisions of Article 3 (§ 33.2-324 et seq.) of Chapter 3, whenever it deems that any part of a highway subject to its jurisdiction is no longer required or an existing crossing by any such highway of the lines of a railway company, or any existing crossing by the lines of a railway company of such highway, is no longer necessary as a part of such highway system, may abandon the section of highway or the crossing.

The procedure for any such abandonment shall be governed by the provisions applicable to the Board as provided in Articles 1, 2, and 3 (§§ 33.2-901 through 33.2-926) of Chapter 9 and all provisions applicable to the Board shall apply, mutatis mutandis, to the governing body of the county.

§ 33.2-720. Supervisors may issue process.

The governing body of a county shall have power to cause process to issue and compel the attendance of witnesses and other parties.

§ 33.2-721. Compensation of clerk of board.

The clerk of the local governing body of a county shall receive for the duties to be performed by him under the provisions of this article compensation to be fixed and allowed to him by the local governing body.

§ 33.2-722. Discontinuance of gates on public highways.

Whenever a public highway is, or has been, established with gates, any person may apply to the governing body of the county to have such gates discontinued, on which application proceedings shall be had in accordance with the applicable provisions of §§ 33.2-706 through 33.2-717. If the local governing body decides that the gates shall be removed, it shall direct the sheriff of the county to remove the same, and the sheriff shall do so at such time as the local governing body may direct.

When damages are allowed to any person or persons on account of the removal of such gates, such damages and the costs incident to the proceeding shall be paid out of the county general fund. Any such person shall have an appeal of right to the circuit court of the county, at any time within 10 days from the date of the order making such allowance, but only from the amount of damages allowed.

Article 3.

Assumption of District Highway Indebtedness.

§ 33.2-723. Assumption of district highway indebtedness by counties.

A. Any county may assume the payment of and pay any outstanding indebtedness of any magisterial district or districts thereof incurred for the purpose of constructing public highways that were subsequently taken over by the Commonwealth, provided the assumption thereof is approved by a majority of the qualified voters of the county voting on the question at an election to be held as provided in this section.

B. The governing body of the county may, by a resolution entered of record in its minute book, require the judges of election to open a poll at the next regular election and take the sense of the qualified voters of the county upon the question whether or not the county shall assume the highway indebtedness of . . . . . district, or . . . . . districts. The local governing body shall cause notice of such election to be given by the posting of written notice thereof at the front door of the county courthouse at least 30 days prior to the date the same is to be held and by publication thereof once a week for two successive weeks in a newspaper published or having general circulation in the county, which notice shall set forth the date of such election and the question to be voted on.

C. The ballots for use in voting upon the question so submitted shall be prepared, printed, distributed, voted, and counted and the returns made and canvassed in accordance with the provisions of § 24.2-684. The results shall be certified by the commissioners of election to the county clerk, who shall certify the same to the governing body of the county, and such returns shall be entered of record in the minute book of the local governing body.

D. If a majority of the voters voting on the question vote in favor of the assumption by the county of the highway indebtedness of any district of the county, such indebtedness shall become and be an obligation of the county and as binding thereon as if the same had been originally contracted by the county. In such event the governing body of the county is authorized to levy and collect taxes throughout the county for the payment of the district indebtedness so assumed, both as to principal and interest.

E. Nothing contained in this section shall affect the validity of such district highway obligations in the event that the result of such election is against the assumption thereof by the county, but they shall continue to be as valid and binding in all respects as they were in their inception.

CHAPTER 8.

OFFENSES CONCERNING HIGHWAYS.

§ 33.2-800. Definition.

As used in this chapter, "highway" means a state or county highway.

§ 33.2-801. Cutting or damaging trees; damaging bridges; damaging markers; obstructing highways; penalty.

Any person is guilty of a Class 1 misdemeanor who:

1. Cuts or damages a tree within 50 feet of a highway so as to render it liable to fall and leaves it standing;

2. Knowingly and willfully, without lawful authority, breaks down, destroys, or damages any bridge or log placed across a stream for the accommodation of pedestrians;

3. Obstructs any highway or any ditch made for the purpose of draining the highway;

4. Willfully or maliciously displaces, removes, destroys, or damages any highway sign or historical marker or any inscription thereon that is lawfully within a highway; or

5. Puts or casts into any public highway any glass, bottles, glassware, crockery, porcelain or pieces thereof, caltrops or any pieces of iron or hard or sharp metal, or any nails, tacks, or sharp-pointed instruments of any kind, likely in their nature to cut or puncture any tire of any vehicle or injure any animal traveling thereon. This subdivision shall not apply to the use of any tire deflation device by a law-enforcement officer while in the discharge of his official duties, provided the device was approved for use by the Division of Purchase and Supply.

§ 33.2-802. Dumping trash; penalty.

A. It shall be unlawful for any person to dump or otherwise dispose of trash, garbage, refuse, litter, a companion animal as defined in § 3.2-6500 for the purpose of disposal, or other unsightly matter on public property, including a public highway, right-of-way, or property adjacent to such highway or right-of-way, or on private property without the written consent of the owner or his agent.

B. When any person is arrested for a violation of this section, and the matter alleged to have been illegally dumped or disposed of has been ejected from a motor vehicle or transported to the disposal site in a motor vehicle, the arresting officer may comply with the provisions of § 46.2-936 in making an arrest.

When a violation of the provisions of this section has been observed by any person, and the matter illegally dumped or disposed of has been ejected or removed from a motor vehicle, the owner or operator of the motor vehicle shall be presumed to be the person ejecting or disposing of the matter. However, such presumption shall be rebuttable by competent evidence.

C. Any person convicted of a violation of this section is guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not less than $250 or more than $2,500, either or both. In lieu of the imposition of confinement in jail, the court may order the defendant to perform a mandatory minimum of 10 hours of community service in litter abatement activities.

D. The governing bodies of localities may adopt ordinances not in conflict with the provisions of this section and may repeal or amend such ordinances.

E. The provisions of this section shall not apply to the lawful disposal of such matter in landfills.

§ 33.2-803. Dump creating fire hazard to public bridge; penalty.

It shall be unlawful for any person to establish or maintain a public or private dump containing flammable articles within 500 feet of any public bridge constructed wholly or partly of wood so as to create a fire hazard to such bridge. Any person violating this section is guilty of a Class 1 misdemeanor. Each day of operation in violation of this section shall constitute a separate offense. An offense in violation of this section may be enjoined in the manner provided by law for the abatement of public nuisances.

§ 33.2-804. Junkyards; penalty.

A. For the purpose of promoting the public safety, health, welfare, convenience, and enjoyment of public travel, protecting the public investment in public highways, and preserving and enhancing the scenic beauty of lands bordering public highways, it is hereby declared to be in the public interest to regulate and restrict the establishment, operation, and maintenance of junkyards in areas adjacent to the highways within the Commonwealth.

B. As used in this section:

"Automobile graveyard" means any lot or place that is exposed to the weather and upon which more than five motor vehicles of any kind that are incapable of being operated and which it would not be economically practical to make operative are placed, located, or found. The movement or rearrangement of vehicles within an existing lot or facility does not render this definition inapplicable. The provisions established by this subsection shall begin with the first day that the vehicle is placed on the subject property.

"Federal-aid primary highway" means any highway within that portion of the primary state highway system as established and maintained under Article 2 (§ 33.2-310 et seq.) of Chapter 3, including extensions of such system within municipalities that have been approved by the U.S. Secretary of Commerce pursuant to 23 U.S.C. § 103(b).

"Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, or waste; junked, dismantled, or wrecked automobiles or parts thereof; and old or scrap iron, steel, or other ferrous or nonferrous material.

"Junkyard" means an establishment or place of business that is maintained, operated, or used for storing, keeping, buying, or selling junk or for the maintenance or operation of an automobile graveyard. "Junkyard" includes garbage dumps and sanitary landfills.

"National Highway System" means the federal-aid highway system referenced in 23 U.S.C. § 103 and regulations adopted pursuant thereto, which includes those highways that are designated as such by congressional action or designation by the U.S. Secretary of Transportation. Prior to congressional approval or designation by the U.S. Secretary of Transportation, highways classified as National System of Interstate and Defense Highways, Dwight D. Eisenhower National System of Interstate and Defense Highways, Interstate System, or federal-aid primary highways as that system existed on June 1, 1991, shall be considered as the National Highway System.

"Primary highway" means any highway within the primary state highway system as established and maintained under Article 2 (§ 33.2-310 et seq.) of Chapter 3, including extensions of such system within municipalities.

"Visible" means capable of being seen without visual aid by a person of normal visual acuity.

C. No junkyard shall be established any portion of which is within 1,000 feet of the nearest edge of the right-of-way of any National Highway System highway or primary highway or within 500 feet of the nearest edge of the right-of-way of any other highway or city street, except the following:

1. Junkyards that are screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main-traveled way of the highway or city street or otherwise removed from sight.

2. Junkyards that are located in areas that are zoned for industrial use under authority of state law or in unzoned industrial areas as determined by the Board.

3. Junkyards that are not visible from the main-traveled way of the highway or city street.

D. Any junkyard lawfully in existence on April 4, 1968, that is within 1,000 feet of the nearest edge of the right-of-way and visible from the main-traveled way of any interstate or federal-aid primary highway, and not located within an industrial area, shall be screened, if feasible, by the Commissioner of Highways at locations on the highway right-of-way or in areas acquired for such purposes outside the right-of-way, so as not to be visible from the main-traveled way of such highways.

Any junkyard lawfully in existence on April 4, 1968, that is within 1,000 feet of the nearest edge of the right-of-way of any other primary highway or within 500 feet of the nearest edge of the right-of-way of any other highway and visible from the main-traveled way of such highway, and not located within an industrial area, may be screened by the Commissioner of Highways in the same manner as junkyards adjacent to National Highway System highways.

The Commissioner of Highways is authorized to acquire by purchase, gift, or the power of eminent domain such lands or interests in lands as may be necessary to provide adequate screening of such junkyards.

E. When the Commissioner of Highways determines that the topography of the land adjoining a National Highway System highway will not permit adequate screening of such junkyards or the screening of such junkyards would not be economically feasible, the Commissioner of Highways shall have the authority to acquire by gift, purchase, or the power of eminent domain such interests in lands as may be necessary to secure the relocation, removal, or disposal of the junkyards and to pay for the costs of their relocation, removal, or disposal. When the Commissioner of Highways determines that the topography of the land adjoining any other highway will not permit adequate screening or such would not be feasible, the Commissioner of Highways may exercise the same authority to relocate such junkyards as is vested in him in regard to National Highway System highways.

F. Any junkyard that comes into existence after April 4, 1968, and that cannot be made to conform to this section is declared to be a public and private nuisance and may be forthwith removed, obliterated, or abated by the Commissioner of Highways or his representatives. The Commissioner of Highways may collect the cost of such removal, obliteration, or abatement from the person owning or operating the junkyard.

G. The Board is authorized to enter into agreements with the United States as provided in 23 U.S.C. § 136 with respect to control of junkyards.

H. The Commissioner of Highways shall not be required to expend any funds for screening or relocation under this section unless and until federal-aid matching funds are made available for this purpose.

I. Any person violating any provision of this section is guilty of a Class 1 misdemeanor.

CHAPTER 9.

ABANDONMENT AND DISCONTINUANCE OF HIGHWAYS AND ROADS.

Article 1.

Abandonment and Discontinuance of Highways in Primary State Highway System.

§ 33.2-900. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Abandonment" means that the public's right to use a public highway, public landing, or public crossing has been extinguished.

"Discontinuance" means that the Board has determined that a highway, landing, or crossing no longer serves the public convenience warranting its maintenance at public expense; it divests the Department from maintenance responsibilities. Discontinuance does not render a highway, landing, or crossing unavailable for public use.

§ 33.2-901. Discontinuance of a section of a highway or railroad crossing.

In any case in which a section of a highway is deemed by the Commissioner of Highways no longer necessary for the uses of the primary state highway system, or when, in laying out, constructing, or maintaining sections of highways in the primary state highway system, a part of a highway has been or is straightened or the location of a part of it is altered and a section of the highway is deemed by the Commissioner of Highways no longer necessary for the uses of the primary state highway system, the Commissioner of Highways, by and with the approval of the Board, may discontinue such section of the highway as a part of the primary state highway system. In addition, in any case in which an existing crossing by such highway of the lines of a railroad company or a crossing by the lines of a railroad company of such highway is deemed by the Commissioner of Highways no longer necessary as a part of the primary state highway system, the Commissioner of Highways, by and with the approval of the Board, may discontinue such crossing as a part of the primary state highway system. Discontinuance under this section does not constitute an abandonment of such highway as a public highway or such crossing as a public crossing unless the procedure conforms to § 33.2-902.

The opening of the new section of highway by the Commissioner of Highways and the entry by the Board upon its minutes of its approval of the discontinuance of the section of the highway or the railroad crossing shall be sufficient to constitute such discontinuance.

§ 33.2-902. Abandonment of highway or railroad crossing; procedure.

A. The Commissioner of Highways either on his own motion or upon petition of any interested landowner may cause any section of a highway in the primary state highway system, or any crossing by such highway of the lines of a railroad company or crossing by the lines of a railroad company of such highway, to be abandoned altogether as a public highway or as a public crossing by complying substantially with the procedure provided in this section.

B. The Commissioner of Highways or any interested landowner may file application with the Board setting out the section of the highway or the railroad crossing sought to be abandoned as a public highway or public railroad crossing. The Board shall give notice of the filing of the application (i) by posting a notice of such application at least three days before the first day of a regular term of the circuit court at the front door of the courthouse of the county in which the section of the highway or railroad crossing sought to be abandoned as a public highway or public railroad crossing is located, or if the section of the highway or the railroad crossing is located partly in two or more counties, at the front door of the courthouse of each county, or (ii) by publishing a notice of such application in two or more issues of a newspaper published in the county or one of the counties in which the section of the highway or the crossing is located. The Board shall also send by registered mail a notice of the application to the governing body of the county or counties. If such highway or railroad crossing is in a town with a population of 3,500 or less, the Board shall give notice to the governing body of the town in the same manner as notice is required to be given to the governing body of the county in which the town is located.

C. If one or more landowners in the county or counties affected by such proposed abandonment or the governing body of a county or town in which the highway or railroad crossing is located files a petition with the Board within 30 days after notice is posted or published and mailed as provided in this section, the Board or a representative thereof shall hold a public hearing in the county or one of the counties for consideration of the application and shall give notice of the time and place of the hearing by publishing such information in at least two issues in a newspaper having general circulation in the county or one of the counties and by mailing notice of the hearing to the governing body of the county or counties, and if applicable to the governing body of the town, in which the highway or railroad crossing is located.

D. If a petition for a public hearing is not filed as provided in this section, or if after a public hearing is held a majority of the Board is satisfied that no public necessity exists for the continuance of the section of highway as a public highway or the railroad crossing as a public railroad crossing or that the welfare of the

public would be served best by abandoning the section of highway or the railroad crossing as a public highway or public railroad crossing, the Board shall (i) within four months of the 30-day period during which notice was posted where no petition for a public hearing was filed or (ii) within four months after the public hearing enter an order on its minutes abandoning the section of highway as a public highway or the railroad crossing as a public railroad crossing, and with that order the section of highway shall cease to be a public highway, unless the local governing body takes control as provided in this article, or the railroad crossing shall cease to be a public railroad crossing. If the Board is not so satisfied, it shall enter an order dismissing the application within the applicable four months provided in this subsection.

E. In considering the abandonment of any section of highway under the provisions of this section, due consideration shall be given to the historic value, if any, of such highway.

§ 33.2-903. Grade crossing closing and safety.

A. It is the public policy of the Commonwealth to enhance public safety by establishing safe highway-rail grade crossings, to consolidate and close unsafe, unnecessary, or redundant crossings, and to limit the establishment of new crossings. The Board has the authority to close public highway-rail grade crossings on all systems of state highways for which it has responsibility.

B. The Commissioner of Highways on his own motion or by request of any interested landowner, railroad corporation, or local governing body may petition the Board to close a highway-rail grade crossing as a public crossing.

C. Prior to petitioning the Board to close a highway-rail grade crossing, the Commissioner of Highways shall conduct a traffic engineering study to determine the validity of closing the crossing. The traffic engineering study shall consider all factors, including (i) the number of freight and passenger trains passing the crossing and their timetable speeds, (ii) the distance to an alternate crossing, (iii) the availability of alternate access, (iv) the crossing's accident history during the five-year period immediately prior to the study, (v) the number of vehicles per day using the crossing, (vi) the posted speed limit at the crossing, (vii) the type of warning devices present at the crossing, (viii) the alignment of the roadway and railroad and their angle of intersection, (ix) the number of trucks per day carrying hazardous materials through the crossing, (x) the number of vehicles per day carrying passengers for hire through the crossing, (xi) the number of school buses per day using the crossing, and (xii) the use of the crossing by emergency vehicles.

D. The results of the traffic engineering study shall be made public in accordance with the procedures set forth in § 33.2-902. The Commissioner of Highways shall present his findings and recommendations to the Board, and the Board shall decide what actions to take regarding the railroad crossing at issue.

§ 33.2-904. Effect of abandonment.

In the case of abandonment of a section of highway or a railroad crossing that is part of the primary state highway system under the provisions of this article, such section of highway or such railroad crossing shall not thereafter be a public highway or public railroad crossing unless conveyed to the county or town and subject to the authority of the local governing body. In the case of proceedings for abandonment of any section of highway, not including a railroad crossing situated less than one and one-half miles from another public crossing over the same railroad, as a public highway under the provisions of this article, the local governing body, insofar as such section of highway is located within the county of such governing body, shall have authority to take over such section of highway, not including the railroad crossing, and maintain it as a public highway. However, the local governing body shall adopt an ordinance or resolution to that effect and to give notice thereof to the Commissioner of Highways within 30 days from the posting or publishing and mailing of the notice of the application for the abandonment of such section of highway as a public highway as provided in this article.

§ 33.2-905. Appeal to circuit court.

A. Any one or more of the landowners who filed a petition, the governing body of any county or town in which the section of highway or the railroad crossing is wholly or partly located, or the Commissioner of Highways may within 30 days from the entry of the order by the Board appeal from the order to the circuit court of the county in which the section of highway or the railroad crossing, or the major portion thereof, sought to be abandoned under § 33.2-902 is located. If the Board fails to enter an order pursuant to § 33.2-902, such person or persons named in this section may appeal to the appropriate circuit court within 30 days

from such failure. Such appeal shall be filed by petition in the clerk's office of such court, setting out the order appealed from or the cause appealed from where no order was entered and the grounds of such appeal. Upon the filing of such petition, the clerk of the circuit court shall docket the appeal, giving it a preferred status. If the appeal is by any of the landowners who filed a petition with the Board for a public hearing, notice of such appeal shall be served upon the attorney for the Commonwealth and the Commissioner of Highways. If the appeal is by the local governing body or the Commissioner of Highways, notice of such appeal shall be served upon the landowners who filed petition with the Board for a public hearing. No such appeal shall be tried by the court within 10 days after notice is given as provided in this section unless such notice is waived. The circuit court shall hear the matter de novo with further right of appeal as provided by law. Upon the hearing of the appeal, the court shall ascertain and by its order determine whether public necessity exists for the continuance of the section of highway or the railroad crossing as a public highway or public railroad crossing or whether the welfare of the public will be served best by abandoning the section of the highway or the railroad crossing as a public highway or public railroad crossing and shall enter its order accordingly. The clerk of the court shall certify a copy of the order of the court to the Board.

B. Upon any such appeal, if it appears to the court that by the abandonment of such section of highway or such railroad crossing as a public highway or public railroad crossing any party to such appeal would be deprived of access to a public highway, the court may cause the railroad company or the local governing body to be made parties to the proceedings, if not already parties, and may enter such orders as seem just and proper for keeping open such section of highway or such railroad crossing for the benefit of such party or parties.

C. The provisions of this section shall not apply to any discontinuance of a portion of the primary state highway system under § 33.2-901.

§ 33.2-906. Alternative procedure for abandonment of old highway or railroad crossing to extent of alteration.

The Commissioner of Highways may declare any highway in the primary state highway system or any highway in the primary state highway system containing a highway-rail grade crossing abandoned when (i) it has been or is altered and a new highway that serves the same users as the old highway is constructed as a replacement and approved by the Commissioner of Highways or (ii) the Chief Engineer of the Department recommends that it is appropriate in connection with the completion of a construction or maintenance project. The old highways or the crossing may be abandoned to the extent of such alteration, but no further, by the entry by the Commissioner of Highways of such abandonment upon the records of the Department.

§ 33.2-907. Conveying sections of highways or other property no longer necessary.

A. Whenever a highway or a section of a highway has been abandoned in accordance with the provisions of § 33.2-902 or 33.2-906 and is deemed by the Commissioner of Highways no longer necessary for the uses of the primary state highway system, the Commissioner of Highways shall so certify in writing and may execute in the name of the Commonwealth a deed or deeds conveying such section or sections of highway, either for consideration or in exchange for other lands that may be necessary for the uses of the primary state highway system. Before any such deed either for the sale or exchange of land is executed conveying any section of a highway along which any person resides, the Commissioner of Highways shall give notice to the governing bodies of the county and town and to the owner of the land upon which such person resides of the intention to convey the section of highway. If after a reasonable notice of such intention any such landowner or local governing body so requests, a hearing shall be ordered by the Commissioner of Highways as provided in this article. If upon such hearing it is determined that such section of highway should be left open for the reasonable convenience of such landowner or the public, then such section of highway shall not be conveyed. No such hearing shall be held if such highway was abandoned under § 33.2-902.

B. When real estate acquired incidental to the construction, reconstruction, alteration, maintenance, and repair of the primary state highway system that does not constitute a section of the public highway is deemed by the Commissioner of Highways no longer necessary for the uses of the primary state highway system, the Commissioner of Highways shall so certify in writing and may execute in the name of the Commonwealth a deed conveying such real estate, interest therein, or any portion thereof, either for consideration or in exchange for other lands that may be necessary for the uses of the primary state highway system.

C. Upon petition of a local governing body, the Board may transfer real estate acquired incidental to the construction, reconstruction, alteration, maintenance, or repair of the primary state highway system that constitutes a section of public highway to the local governing body, and upon such transfer such section of highway shall cease being a part of the primary state highway system.

Article 2.

Abandonment and Discontinuance of Highways in Secondary State Highway System.

§ 33.2-908. Discontinuance of highway, landing, or railroad crossing; procedure.

A. For the purposes of this article, "landing" means a place on a river or other navigable body of water for loading or unloading goods or for the reception and delivery of travelers, the terminus of a highway on a river or other navigable body of water for loading or unloading goods or for the reception and delivery of travelers, or a place for loading or unloading watercraft, but not a harbor for watercraft.

B. Upon petition of the governing body of any county in which a highway, landing, or railroad crossing is located or upon petition of the governing body of a town with a population of 3,500 or less, or on its own motion, the Board may discontinue any highway, landing, or railroad crossing in the secondary state highway system as a part thereof in any case in which the Board deems such highway, landing, or railroad crossing not required for public convenience. If the Board on its own motion desires to discontinue any such highway, landing, or railroad crossing, the Board shall give notice to the affected governing body at least 30 days prior to such discontinuance. In addition, in cases where only a highway or landing or the maintenance thereof is to be discontinued, the Board shall give notice of such intention to the public at least 30 days prior to such action by publishing such notice in at least one issue in a newspaper having general circulation in the county in which the affected highway or landing is situated and, where practicable, by a registered letter to each landowner whose property abuts the section of highway or landing to be discontinued. For the purposes of this section, the Board may, where practicable, rely upon the tax records of the county to determine the names and addresses of such owners. These additional notice provisions shall not be required in cases where the section of highway to be discontinued has been replaced by a new highway serving the same users. If the governing body of any county or town requests a hearing, or upon petition of any landowner whose property abuts a highway or landing that is to be discontinued, the Board shall hold a hearing in the county in which the highway, landing, or railroad crossing is located in order to ascertain whether or not such highway, landing, or railroad crossing should be discontinued. From the finding of the Board, an appeal shall lie to the circuit court of the county in which such highway, landing, or railroad crossing is located and the procedure thereon shall conform to the procedure prescribed in § 33.2-905. The jurisdiction and procedure for abandonment of highways and landings discontinued as parts of the secondary state highway system in accordance with this article shall remain in the local governing bodies.

C. In cases where the Chief Engineer of the Department recommends that it is appropriate in connection with the completion of a construction or maintenance project to discontinue any highway, landing, or railroad crossing in the secondary state highway system, the Commissioner of Highways may discontinue such highway, landing, or railroad crossing as he deems proper. The entry by the Commissioner of Highways upon the records of the Department of the discontinuance shall be sufficient to constitute such discontinuance.

§ 33.2-909. Abandonment of highway, landing, or railroad crossing; procedure.

A. The governing body of any county on its own motion or upon petition of any interested landowner may cause any section of the secondary state highway system, or any crossing by the highway of the lines of a railroad company or crossing by the lines of a railroad company of the highway, deemed by it to be no longer necessary for the uses of the secondary state highway system to be abandoned altogether as a public highway, a public landing, or a public railroad crossing by complying substantially with the procedure provided in this section.

B. The governing body of the county shall give notice of its intention to abandon any such highway, landing, or railroad crossing (i) by posting a notice of such intention at least three days before the first day of a regular term of the circuit court at the front door of the courthouse of the county in which the section of the highway, landing, or railroad crossing sought to be abandoned as a public highway, public landing, or public railroad crossing is located or (ii) by posting notice in at least three places on and along the highway, landing, or railroad crossing sought to be abandoned for at least 30 days and in either case by publishing

notice of its intention in two or more issues of a newspaper having general circulation in the county. In addition, the governing body of the county shall give notice of its intention to abandon such highway, landing, or railroad crossing to the Board or the Commissioner of Highways. In any case in which the highway, landing, or railroad crossing proposed to be abandoned lies in two or more counties, the governing bodies of such counties shall not abandon such highway, landing, or railroad crossing unless and until all affected governing bodies agree. The procedure in such cases shall conform mutatis mutandis to the procedure prescribed for the abandonment of a highway, landing, or railroad crossing located entirely within a county.

When the governing body of a county gives notice of intention to abandon a public landing, the governing body shall also give such notice to the Department of Game and Inland Fisheries.

C. If one or more landowners in the county whose property abuts the highway, landing, or railroad crossing proposed to be abandoned, or if only a section of a highway, landing, or railroad crossing is proposed to be abandoned, whose property abuts such section, or the Board or the Department of Game and Inland Fisheries, in the case of a public landing, files a petition with the governing body of the county within 30 days after notice is posted and published as provided in this section, the governing body of the county shall hold a public hearing on the proposed abandonment and shall give notice of the time and place of the hearing by publishing such information in at least two issues in a newspaper having general circulation in the county and shall also give notice to the Board or, if a public landing is sought to be abandoned, to the Department of Game and Inland Fisheries.

D. If a petition for a public hearing is not filed as provided in this section, or if after a public hearing is held the governing body of the county is satisfied that no public necessity exists for the continuance of the section of the secondary highway as a public highway or the railroad crossing as a public railroad crossing or the landing as a public landing or that the safety and welfare of the public would be served best by abandoning the section of highway, the landing, or the railroad crossing as a public highway, public landing, or public railroad crossing, the governing body of the county shall (i) within four months of the 30-day period during which notice was posted where no petition for a public hearing was filed or (ii) within four months after the public hearing adopt an ordinance or resolution abandoning the section of highway as a public highway, or the landing as a public landing, or the railroad crossing as a public railroad crossing, and with that ordinance or resolution the section of highway shall cease to be a public highway, a public landing, or a public railroad crossing. If the governing body is not so satisfied, it shall dismiss the application within the applicable four months provided in this subsection.

E. A finding by the governing body of a county that a section of the secondary state highway system is no longer necessary for the uses of the secondary state highway system may be made if the following conditions exist:

1. The highway is located within a residence district as defined in § 46.2-100;

2. The residence district is located within a county having a density of population exceeding 1,000 per square mile;

3. Continued operation of the section of highway in question constitutes a threat to the public safety and welfare; and

4. Alternate routes for use after abandonment of the highway are readily available.

F. In considering the abandonment of any section of highway under the provisions of this section, due consideration shall be given to the historic value, if any, of such highway.

G. Any ordinance or resolution of abandonment issued in compliance with this section shall give rise in subsequent proceedings, if any, to a presumption of adequate justification for the abandonment.

H. No public landing shall be abandoned unless the Board of Game and Inland Fisheries shall by resolution concur in such abandonment.

§ 33.2-910. Appeal to circuit court.

Any one or more of the landowners whose property abuts the highway, landing, or railroad crossing proposed to be abandoned, or if only a section of a highway, landing, or railroad crossing is proposed to be abandoned, whose property abuts such section of the highway, landing, or railroad crossing, and who petitioned for a public hearing under § 33.2-909 or the Commissioner of Highways, or if a public landing is proposed to be abandoned, the Director of the Department of Game and Inland Fisheries, may within 30 days

from the adoption of an ordinance or resolution by the governing body of the county appeal from the ordinance or resolution to the circuit court of the county in which the section of highway, the public landing, or the railroad crossing sought to be abandoned under § 33.2-909 is located. Where the governing body of the county fails to adopt an ordinance or resolution pursuant to § 33.2-909, such person or persons named in this section shall within 30 days from such failure have a right of appeal to the appropriate circuit court. Such appeal shall be filed by petition in the clerk's office of such court, setting out the ordinance or resolution appealed from or the cause appealed from where no ordinance or resolution was adopted and the grounds of such appeal. Upon the filing of such petition, the clerk of the circuit court shall docket the appeal, giving it a preferred status, and if the appeal is by any of the landowners who filed a petition with the governing body of the county for a public hearing, notice of such appeal shall be served upon each member of the governing body of the county pursuant to § 8.01-300 and either the Commissioner of Highways or the Director of the Department of Game and Inland Fisheries, as applicable, and if the appeal is by either the Commissioner of Highways or the Director of the Department of Game and Inland Fisheries, notice of such appeal shall be served upon the governing body of the county and the landowners who filed petition with the governing body of the county for a public hearing. No such appeal shall be tried by the court within 10 days after notice is given, as provided in this section unless such notice is waived. The circuit court shall decide the appeal based upon the record and upon such other evidence as may be presented by the parties. Upon the hearing of the appeal, the court shall ascertain and by its order determine whether adequate justification exists for the decision of the governing body of the county that public necessity exists for the continuance of the section of highway, landing, or the railroad crossing as a public highway, public landing, or public railroad crossing or whether the welfare of the public will be served best by abandoning the section of the highway, landing, or the railroad crossing as a public highway, public landing, or public railroad crossing and shall enter its order accordingly.

Upon any such appeal, if it appears to the court that by the abandonment of such section of highway, landing, or railroad crossing as a public highway, public landing, or public railroad crossing any party to such appeal would be deprived of access to a public highway, the court may cause the railroad company and the governing body of the county, or either, to be made parties to the proceedings, if not already parties, and may enter such orders as seem just and proper for keeping open such section of highway, landing, or railroad crossing for the benefit of such party or parties.

§ 33.2-911. Permissible uses by counties of certain discontinued secondary highways.

Whenever a secondary highway is discontinued under § 33.2-908, the highway shall continue to be available for use by the public as a highway, unless it has been abandoned pursuant to this chapter or its use has been modified by an ordinance adopted pursuant to this section. The governing body of the county may by ordinance provide for use of a discontinued highway for any of the following purposes: (i) hiking or bicycle trails and paths or other nonvehicular transportation and recreation; (ii) greenway corridors for resource protection and biodiversity enhancement, with or without public ingress and egress; and (iii) access to historic, cultural, and educational sites.

§ 33.2-912. Alternative procedure for abandonment of old highway or crossing to extent of alteration.

The Commissioner of Highways may declare any highway in the secondary state highway system or any highway in the secondary state highway system containing a highway-rail grade crossing abandoned when (i) it has been or is altered and a new highway that serves the same users as the old highway is constructed as a replacement and approved by the Commissioner of Highways or (ii) the Chief Engineer of the Department recommends that it is appropriate in connection with the completion of a construction or maintenance project. The old highway or the public crossing may be abandoned to the extent of such alteration, but no further, by the entry by the Commissioner of Highways of such abandonment upon the records of the Department.

§ 33.2-913. Conveying sections of highways, landings, or other property no longer necessary.

A. Whenever a secondary highway or landing has been abandoned in accordance with the provisions of § 33.2-909 or 33.2-910 or in accordance with § 33.2-912 and its use is no longer deemed necessary by the Commissioner of Highways, the Commissioner of Highways shall so certify in writing to the governing body of the county in which such highway or landing is located, and the governing body of the county or the Commissioner of Highways shall then be authorized to execute, in the name of the Commonwealth or the

county, a deed or deeds conveying such section or sections of highway or such landing, either for consideration or in exchange for other lands that may be necessary for the uses of the secondary state highway system. Before any such deed either for the sale or exchange of land is executed conveying any section of a highway or landing along which any person resides, notice shall be given by the Commissioner of Highways or the governing body of the county and to the owner or owners of the land upon which such person resides of the intention to convey the section of highway or the landing and if after a reasonable notice of such intention any such landowner so requests, a hearing shall be ordered by the Commissioner of Highways or governing body of the county as provided in this article. If upon such hearing it is determined that such section of highway or landing should be kept open for the reasonable convenience of such landowner or the public, then such section of highway or landing shall not be conveyed.

Any such conveyance by the governing body of a county shall not be subject to § 15.2-1800.

B. When real estate acquired by the Commonwealth incidental to the construction, reconstruction, alteration, maintenance, and repair of the secondary state highway system does not constitute a section of a public highway and is deemed by the Commissioner of Highways no longer necessary for the uses of the secondary state highway system, the Commissioner of Highways shall so certify in writing and is authorized to execute in the name of the Commonwealth a deed or deeds conveying such real estate, interest therein, or any portion thereof, either for consideration or in exchange for other lands that may be necessary for the uses of the secondary state highway system.

C. Upon petition of a local governing body, the Board may transfer real estate acquired incidental to the construction, reconstruction, alteration, maintenance, or repair of the secondary state highway system that constitutes a section of public highway to the local governing body, and upon such transfer, such section of highway shall cease being a part of the secondary state highway system.

Any such conveyance shall be subject to approval of the Board by resolution and recorded in the minutes of the Board.

Article 3.

Abandonment of Roads Not in Primary or Secondary State Highway System.

§ 33.2-914. County roads not part of primary or secondary state highway system; definitions.

A. The provisions of this article shall apply mutatis mutandis to county roads maintained by a county and not part of the secondary state highway system and to roads dedicated to public use but that are not part of the primary or secondary state highway system.

B. For the purposes of this article:

"Governing body" means the governing body of a county.

"Road" includes streets and alleys dedicated to public use and any existing crossing by the lines of a railroad company of such road and a railroad crossing by such road of the lines of a railroad company.

§ 33.2-915. Abandonment of certain roads and railroad crossings by governing body.

A. When a section of a road not in the secondary state highway system, or an existing crossing by such road of the lines of a railroad company or a crossing by the lines of a railroad company of such road, is deemed by the governing body in which it is located to be no longer necessary for public use, the governing body may abandon such section of the road or such crossing by proceeding as prescribed in this article.

B. In considering the abandonment of any section of road under the provisions of this section, due consideration shall be given to the historic value, if any, of such road.

§ 33.2-916. Notice of proposed abandonment.

In the case of a proposed abandonment of a road not part of the primary or secondary state highway system, the governing body shall give at least 30 days' notice of its intention to do so by posting notice at the front door of the courthouse, by posting notices on at least three places along and visible from the road proposed to be abandoned, and by publishing notice in at least two issues in a newspaper having general circulation in the county. All such notices shall state the time and place at which the governing body will meet to consider the abandonment of such road.

§ 33.2-917. Petition for abandonment.

Any person desiring to have a road abandoned may petition the governing body to abandon such road by filing the petition and a reasonably accurate plat and description of the section proposed to be abandoned

with the governing body and in the clerk's office of the county. The governing body may proceed to have such road abandoned as provided in this article, but the expenses shall be borne by the petitioner.

§ 33.2-918. Petition for public hearing on proposed abandonment.

If one or more landowners affected by a proposed abandonment file a petition for a public hearing with the governing body within 30 days after notice is posted and published, the governing body shall hold a public hearing in the county for the consideration of the proposed abandonment.

§ 33.2-919. Action of governing body.

If a petition for a public hearing is not filed as provided in § 33.2-918, or if after a public hearing is held the governing body is satisfied that no public necessity exists for the continuance of the section of road as a public road or the railroad crossing as a public railroad crossing or that the welfare of the public would be served best by abandoning the section of road or the railroad crossing as a public road or public railroad crossing, the governing body shall (i) within four months of the 30-day period during which notice was posted where no petition for a public hearing was filed or (ii) within four months after the public hearing adopt an ordinance or resolution abandoning the section of road as a public road or the railroad crossing as a public railroad crossing, and with that ordinance or resolution the section of road shall cease to be a public road. If the governing body is not so satisfied, it shall dismiss the application within the applicable four months provided in this section.

§ 33.2-920. Appeal to circuit court.

Any one or more of the landowners who filed a petition or the governing body may within 30 days from the action of the governing body on the proposal appeal from the action of the governing body to the circuit court of the county. Where the governing body fails to adopt an ordinance or resolution pursuant to § 33.2-919, such person named in this section shall within 30 days from such failure have a right of appeal to the appropriate circuit court. Such appeal shall be filed by petition in the clerk's office of such court, setting out the action or inaction appealed from and the grounds for appeal. Upon the filing of such petition, the clerk of the circuit court shall docket the appeal, giving it a preferred status, and if the appeal is by any of the landowners who filed a petition with the governing body for a public hearing, notice of such appeal shall be served upon the attorney for the Commonwealth and the governing body. No such appeal shall be tried by the court within 10 days after notice is given as provided in this section unless such notice is waived. The circuit court shall hear the matter de novo with further right of appeal as provided by law. The court may appoint viewers to make such investigation and findings as the court requires of them. Upon the hearing of the appeal, the court shall ascertain and by its order determine whether public necessity exists for the continuance of the section of road or the railroad crossing as a public road or public railroad crossing or whether the welfare of the public will be served best by abandoning the section of the road or the railroad crossing as a public road or public railroad crossing and shall enter its order accordingly.

Upon any such appeal, if it appears to the court that by the abandonment of such section of road or such railroad crossing as a public road or public railroad crossing any party to such appeal would be deprived of access to a public road, the court may cause the railroad company and the governing body, or either, to be made parties to the proceedings, if not already parties, and may enter such orders as seem just and proper for keeping open such section of road or such railroad crossing for the benefit of such party or parties.

§ 33.2-921. Effect of abandonment.

In the case of the abandonment of any section of road or any railroad crossing under the provisions of this article, such section of road or such crossing shall cease to be a public road or public railroad crossing. However, any such abandonment shall be subject to the rights of owners of any public utility installations that have been previously erected therein.

§ 33.2-922. Recordation of abandonment of roads, highways, or railroad crossings by counties.

A certified copy of any ordinance, resolution, or order abandoning a road, highway, or railroad crossing by a county adopted pursuant to Article 2 (§ 33.2-908 et seq.) or this article shall be recorded and indexed in the deed book in the name of the county as grantor or where record title to the underlying fee is not known shall be recorded in the office of the clerk of court in the county where such road, highway, or railroad crossing is located in the name of the county adopting such ordinance or resolution or entering such order.

§ 33.2-923. Alternative procedure for abandonment of old road or crossing to extent of alteration.

When any road or any road containing a highway-rail grade crossing has been or is altered and a new road that serves the same users as the old road is constructed as a replacement and approved by the governing body, the old road or public crossing may be abandoned to the extent of such alteration, but no further, by an ordinance or resolution of the governing body declaring the old road or public crossing abandoned.

§ 33.2-924. Conveying sections of roads or other property no longer necessary.

When any road abandoned as provided in this article is deemed by the governing body no longer necessary for the public use, the governing body shall so certify in its minutes and may authorize the sale and conveyance in the name of the county of a deed or deeds conveying such sections, either for consideration or in exchange for other lands that may be necessary for the uses of the county. However, before any such deed either for the sale or exchange of land is executed conveying any section of a road along which any person resides, the governing body shall give notice to the owner of the land upon which such person resides of the intention to convey the section of road, and if after a reasonable notice of such intention any such landowner so requests, the governing body shall order a hearing. If upon such hearing it is determined that such section of road should be kept open for the reasonable convenience of such landowner or the public, then such section of road shall not be conveyed. The action of the governing body under this section shall not be subject to § 15.2-1800.

§ 33.2-925. Alternative method of abandoning roads.

As an alternative to the procedure for abandonment prescribed by this article, a road may be abandoned in accordance with the procedure for vacations in subdivision 2 of § 15.2-2272. All abandonments of roads sought to be effected according to subsection (b) of former § 15.1-482 before July 1, 1990, are hereby validated notwithstanding any defects or deficiencies in the proceeding, provided that property rights that have vested subsequent to the attempted abandonment are not impaired by such validation. The manner of reversion shall not be affected by this section.

§ 33.2-926. Chapter 20 of Title 15.2 not affected.

No provision of Articles 1 (§ 33.2-900 et seq.), 2 (§ 33.2-908 et seq.), or this article shall affect the provisions of Chapter 20 (§ 15.2-2000 et seq.) of Title 15.2.

Article 4.

Abandonment of Highways for Flooding Secondary Highways in Connection with Municipal Water Supply Projects.

§ 33.2-927. Abandonment of highway in area to be flooded in connection with municipal water supply projects.

When a city or town that owns and operates a waterworks system that supplies the city or town and its inhabitants with water finds it necessary to increase its water supply such that it requires impounding the water of a stream outside the corporate limits of such city or town by means of a dam erected in such stream and the impounding of the water thereof would result in the overflow, or flooding, of a section or sections of a highway or highways within the secondary state highway system that necessitates the alteration and relocation of the highway or highways and the governing body of the city or town by ordinance declares (i) such necessity and (ii) that it is the intention of such city or town to comply with the requirements of this article, then the highway proposed to be flooded may be discontinued and abandoned but only after the city or town has complied with the provisions and requirements of this article.

§ 33.2-928. Procedure to secure abandonment of highways to be flooded in connection with municipal water supply projects.

A city or town subject to the provisions of this article shall certify to the governing body of the county within which the highway, or the greater part thereof, lies a copy of the ordinance adopted by the city or town as provided in this article. The governing body of the county, upon receipt, shall within 30 days (i) consider the reasonableness of the action contemplated by the city or town ordinance, (ii) propose and publish an ordinance approving or disapproving the action contemplated by the city or town, and (iii) conduct a hearing thereon. In the event that after such hearing the governing body of the county disapproves the proposed flooding, discontinuance, and abandonment of the highway, the city or town shall have the right to an appeal

to the circuit court of the county where the question of the reasonableness of the proposed flooding and abandonment shall be heard de novo by the circuit court and judgment shall be rendered according to its decision. From the judgment a writ of error will lie in the discretion of the Supreme Court of Virginia.

§ 33.2-929. Plans for relocation of highways in connection with municipal water supply projects.

If there is a final approval of the abandonment of the highway by the governing body of the county or by the court, the city or town shall, solely at its own expense, submit to the Commissioner of Highways plans and specifications for a proposed relocation of the highway, containing such information and facts as a location, elevations, and other matters the Commissioner of Highways may require. The Commissioner of Highways shall have the power to change, alter, and amend the plans in order to conform to the views of the Commissioner of Highways as to the location, width, and type of construction of such highway to be built on the new location, provided that the new highway is located such that it will not be flooded by the water to be impounded, and provided further that the Commissioner of Highways may not require a more expensive type or character of highway than the one to be abandoned. The Commissioner of Highways shall approve such plans and specifications either as proposed by the city or town or as amended by the Commissioner of Highways.

§ 33.2-930. Acquisition of lands for relocation.

Upon the approval of plans and specifications by the Commissioner of Highways, the city or town shall, solely at its own expense and in the name of the Commonwealth, acquire either by purchase or condemnation the right-of-way necessary to construct the highway on the new location as shown by the plans approved by the Commissioner of Highways. In the event of condemnation, the proceedings shall be instituted in the name of the city or town and shall conform to the proceedings that would be applicable if they had been instituted by the Commissioner of Highways. However, when the award has been paid, the title to the lands acquired in the proceedings shall vest in the Commonwealth in the same manner as if the Commissioner of Highways had instituted and conducted the proceedings and had paid the award.

§ 33.2-931. Costs of relocation.

The city or town shall pay out of its own funds all costs incident to all surveys, plans, specifications, blueprints, or other matters relating to the relocation of the highway and the entire cost of acquiring, by purchase or by condemnation, the right-of-way.

§ 33.2-932. Construction of relocated highway.

Upon the acquisition of a right-of-way as provided in this article, the city or town shall grade such right-of-way and construct the highway required, in accordance with the plans and specifications approved by the Commissioner of Highways.

§ 33.2-933. Approval or disapproval of construction.

When a highway is completed, the city or town shall notify the Commissioner of Highways, who shall promptly cause an inspection to be made by the Department. If the Department approves the highway construction, the Commissioner of Highways shall notify the city or town in writing of such fact. If the Department disapproves the highway construction, it shall notify the city or town, specifying the Department's objections and recommendations for remedying or removing them, and the city or town shall promptly carry out such recommendations.

§ 33.2-934. New highway part of secondary state highway system; former highway to vest in city or town.

When the city or town has been notified by the Commissioner of Highways of final approval of the construction of the highway, such highway shall immediately become a part of the secondary state highway system, and the public shall be vested with the same rights of travel on such highway as it possesses with respect to the other highways in the system. The part of the highway that it is proposed to flood shall be deemed to be abandoned, and all public rights therein shall vest in the city or town.

CHAPTER 10.

EMINENT DOMAIN.

Article 1.

Eminent Domain and Damages.

§ 33.2-1000. Definitions.

As used in this article, unless the context requires a different meaning:

"Certificate" means an instrument that, when recorded in the office of the clerk of the circuit court wherein condemnation proceedings are pending or are to be instituted by the Commissioner of Highways, terminates the interest or estate of the owner of the property described therein and vests defeasible title to such property or interest or estate of the owner in the Commonwealth. "Certificate" includes a certificate of deposit and a certificate of take.

"Certificate of deposit" means a certificate issued by the Commissioner of Highways and countersigned by the State Treasurer, stating that any sum or sums designated therein shall be paid pursuant to the order of the court, and filed by the Commissioner of Highways with the court wherein condemnation proceedings are pending or are to be instituted in lieu of the payment of funds into court, as provided in subdivision A 2 of § 33.2-1019.

"Certificate of take" means a certificate recorded by the Commissioner of Highways with the court wherein condemnation proceedings are pending or are to be instituted, in connection with which the Commissioner of Highways has deposited funds with the court as provided in subdivision A 1 of § 33.2-1019.

"Owner" means any person owning land, buildings, structures, or improvements upon land where such ownership is of record in the land records of the clerk's office of the circuit court of the city or county where the property is located. "Owner" does not include trustees or beneficiaries under a deed of trust, any person with a security interest in the property, or any person with a judgment or lien against the property. In proceedings instituted by the Commissioner of Highways under Title 25.1 or this title, "owner" includes persons owning structures or improvements for which an outdoor advertising permit has been issued by the Commissioner of Highways pursuant to § 33.2-1208. This definition of owner shall not alter in any way the valuation of such land, buildings, structures, or improvements under existing law.

"Public highway" means a highway, road, or street. When applicable, "public highway" includes a bridge, ferry, causeway, landing, or wharf.

§ 33.2-1001. Power to acquire lands, etc.; conveyance to municipality after acquisition; property owners to be informed and briefed.

A. The Commissioner of Highways is vested with the power to acquire by purchase, gift, or power of eminent domain such lands, structures, rights-of-way, franchises, easements, and other interest in lands, including lands under water and riparian rights, of any person, association, partnership, corporation, or municipality or political subdivision, deemed necessary for the construction, reconstruction, alteration, maintenance, and repair of the public highways of the Commonwealth and for these purposes and all other purposes incidental thereto may condemn property in fee simple and rights-of-way of such width and on such routes and grades and locations as the Commissioner of Highways may deem requisite and suitable, including locations for permanent, temporary, continuous, periodical, or future use and rights or easements incidental thereto and lands, quarries, and locations, with rights of ingress and egress, containing gravel, clay, sand, stone, rock, timber, and any other road materials deemed useful or necessary in carrying out the purposes of this subsection.

B. The Commissioner of Highways is authorized to exercise the power provided under subsection A within municipalities on projects that are constructed with state or federal participation if requested by the municipality concerned. Whenever the Commissioner of Highways has acquired property pursuant to a request of the municipality, he shall convey the title so acquired to the municipality, except that rights-of-way or easements acquired for the relocation of a railroad, public utility company, or public service corporation or company, another political subdivision, or a cable television company in connection with such projects shall be conveyed to that entity in accordance with § 33.2-1014. The authority for such conveyance shall apply to acquisitions made by the Commissioner of Highways pursuant to previous requests as well as any subsequent request.

C. Any offer by the Commissioner of Highways to a property owner with respect to payment of compensation for the prospective taking of property and damage to property not taken incident to the purposes of this section shall separately state (i) the property to be taken and the amount of compensation offered therefor and (ii) the nature of the prospective damage or damages and the amount of compensation offered for

each such prospective damage. The amount of the offer shall not be less than the amount of the approved appraisal of the fair market value of such property, in accordance with the provisions of § 25.1-417, or the current assessed value of such property for real estate tax purposes, unless the property has physically changed in a material and substantial way since the current assessment date such that the real estate tax assessment no longer represents a fair valuation of the property, when the entire parcel for which the assessment is made is to be acquired, whichever is greater. Any such appraisal used by the Commissioner of Highways as the basis for an offer shall be prepared by a real estate appraiser licensed in accordance with Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1.

D. The Commissioner of Highways shall also provide to a property owner a copy of any report of status of title prepared in connection with such acquisition if prepared pursuant to subsection D of § 25.1-204.

E. In negotiating with a property owner with respect to payment for prospective damage to property not taken incident to the purposes of this section, the Commissioner of Highways shall ensure that such property owner or his authorized representative is properly informed as to the type and amount of foreseeable damage or enhancement. Adequate briefing includes (i) the giving of plats and profiles of the project, showing cuts and fills, together with elevations and grades and (ii) explanation, in lay terms, of all proposed changes in profile, elevation, and grade of the highway and entrances, including the elevations of proposed pavement and shoulders, both center and edges, with relation to the present pavement and approximate grade of entrances to the property.

F. Any option or deed executed by the property owner shall contain a statement that the plans as they affect his property have been fully explained. However, the requirements of this section with respect to information and briefing and the acknowledgment thereof in options and deeds shall in no way be construed to affect the validity of any conveyance, to create any right to compensation, or to limit the authority of the Commissioner of Highways to reasonably control the use of public highways so as to promote the public health, safety, and welfare.

G. Nothing in this section shall make evidence of tax assessments admissible as proof of value in an eminent domain proceeding.

§ 33.2-1002. Limitation on power of eminent domain.

No property that is within an agricultural and forestal district as provided by the Agricultural and Forestal Districts Act (§ 15.2-4300 et seq.) shall be condemned by the Commissioner of Highways except in accordance with § 15.2-4313.

§ 33.2-1003. Additional power to acquire lands.

The Commissioner of Highways may use the powers granted in this title to acquire needed property interests for purposes set out in Article 5 (§ 33.2-281 et seq.) of Chapter 2.

§ 33.2-1004. Plans for acquisition of rights-of-way.

Subject to compliance with applicable federal regulations, the Commissioner of Highways shall establish a plan for identification and acquisition of rights-of-way that may be needed within the corridors designated on the Statewide Transportation Plan.

§ 33.2-1005. Acquisition of real property that may be needed for transportation projects; sale of certain real property.

A. When the Commissioner of Highways determines that any real property will be required in connection with the construction of a transportation project, or project as defined in § 33.2-1700, within a period not exceeding 12 years for the Interstate System or 10 years for any other highway system or transportation project from the time of such determination, and that it would be advantageous to the Commonwealth to acquire such real property, he may proceed to do so. The Commissioner of Highways may lease any real property so acquired to the owner from whom such real property is acquired, if requested by him, and, if not so requested, to another person upon such terms and conditions as in the judgment of the Commissioner of Highways may be in the public interest. If the transportation project contemplated, or project as defined in § 33.2-1700, has not been let to contract or construction has not commenced within a period of 20 years from the date of the acquisition of such property, and a need for the use of such property has not been determined for any alternative transportation project, then upon written demand of the owner, or his heirs or assigns, that is received (i) within 90 days from the expiration of such 20-year period or such extension as provided for in

this section or (ii) within 30 days from publication of a notice of the intent of the Commissioner of Highways to dispose of such property in a newspaper of general circulation in the political subdivision in which the property is located and the Commissioner of Highways shall notify to the extent practical, the last known owner of said property by certified mail, that such property shall be reconveyed by the Commonwealth to such owner, or his heirs or assigns, upon repayment of the original purchase price, without interest. If the reconveyance is not concluded within six months from receipt by the Commissioner of Highways of a written demand, the reconveyance opportunity shall lapse. However, the 20-year limit established by this section within which the Department must let to contract or begin construction in order to avoid reconveyance shall be extended by the number of days of delay caused by litigation involving the project or by the failure of the Commonwealth to receive anticipated federal funds for such project. The 20-year limit may also be extended in those instances in which a project is included in the Six-Year Improvement Program of the Board or the Six-Year Improvement Program for secondary highways prepared by the county boards of supervisors and in which steps have been taken to move forward. No such reconveyance shall be required for rights-of-way acquired for future transportation improvements at the request of local governing bodies or for rights-of-way acquired for state construction designed to provide future additional lanes or other enhancements to existing transportation facilities.

B. If any real property acquired under this article for use in connection with a transportation project is subsequently offered for sale by the Department and such property is suitable for independent development, the Department shall offer the property for sale at fair market value to the owner from whom it was acquired before such property is offered for sale to any other person. The Commissioner of Highways shall notify, to the extent practicable, the last known owner of such property by certified mail, and the owner shall have 30 days from the date of such notice to advise the Commissioner of Highways of his interest in purchasing the property. If the purchase of the property by the owner from whom it was acquired is not concluded within six months from receipt by the Commissioner of Highways of a written notice, the purchase opportunity shall lapse. The provisions of this subsection shall apply only to property to which the provisions of subsection A do not apply.

C. Subsection B shall not apply to Department projects carried out in cooperation with the United States Army Corps of Engineers as part of a nonstructural flood control project. If property acquired by the Commonwealth under this article in connection with a project is no longer needed by the Commonwealth for such project, such property shall be conveyed to the locality in which such project is located and used in connection with the redevelopment. If such property is not used for economic development, then the property shall revert to the Commonwealth and may be used for any purposes deemed appropriate, including resale.

§ 33.2-1006. Reconveyance where property deemed suitable for mass transit purposes.

If any real property that, under the provisions of § 33.2-1005, is or may become eligible for reconveyance is deemed suitable for the mass transit purposes of a public agency, authority, instrumentality, or public service corporation or company, and such entity has submitted tentative plans to the Commissioner of Highways for a mass transit facility utilizing such real property, or portions thereof, and, prior to the eligibility of that real property for reconveyance under this article, the Commissioner of Highways has approved the use of such real property for mass transit purposes, such real estate shall not be eligible for reconveyance under those sections. Upon the formulation of final plans for the facility, the Commissioner of Highways is authorized to enter into an agreement with any such entity for the conveyance of the property to such entity. Any property or portions thereof not necessary for the mass transit facility shall become eligible for reconveyance under the provisions of § 33.2-1005 upon a determination of the final plans for the facility. Such agreement shall provide for the payment to the Commonwealth of an amount equal to that expended by the Commonwealth in the acquisition of such real property, including proportionate administrative costs and costs under the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. Upon payment of the agreed consideration, the Commissioner of Highways shall convey the specified property to the facility. However, if construction of such planned facilities is not commenced within 10 years from the date of the agreement between the transit agency and the Commissioner of Highways, the persons who would otherwise have been authorized to petition for reconveyance under § 33.2-1005 or their

heirs or assigns may seek reconveyance under the same procedures and on the same basis as established in § 33.2-1005.

This section shall not compel the Commissioner of Highways to convey any such property to such entities in contravention of any federal law or regulation affecting the disposition of real property acquired for highway purposes when such property is no longer needed for such purposes when such property has been acquired with federal funding participation.

§ 33.2-1007. Authority to acquire entire tract of land, or parcel thereof, when only part to be utilized for highway purposes.

In acquiring rights-of-way for highway construction, reconstruction, or improvement, and lands incidental to such construction, reconstruction, or improvement, the Commissioner of Highways is authorized and empowered, whenever a portion of a tract of land is to be utilized for right-of-way or a purpose incidental to the construction, reconstruction, or improvement of a public highway, to acquire by purchase, gift, or the exercise of the power of eminent domain the entire tract of land or any part thereof whenever (i) the remainder of such tract or part thereof can no longer be utilized for the purpose for which the entire tract is then being utilized; (ii) a portion of a building is to be taken; (iii) the cost of removal or relocation of the buildings or other improvements on the remaining portion necessitated by the taking would exceed the cost of destroying such buildings or other improvements; (iv) the highway project will leave the remaining portions without a means of access to a public highway; or (v) in the judgment of the Commissioner of Highways the resulting damages to the remainder of such tract or part thereof lying outside the proposed right-of-way, or the area being acquired for a purpose incidental to the construction, reconstruction, or improvement of a public highway, will approximate or equal the fair market value of such remaining lands. However, the Commissioner of Highways shall not acquire the remainder of such tracts by purchase where the remaining portion is in excess of 10 acres or by condemnation where the remaining portion is in excess of two acres. Nothing contained in this section shall be construed as preventing the Commissioner of Highways from complying, where applicable, with the provisions of § 25.1-417.

§ 33.2-1008. Authority to acquire land to replace parkland; applicability.

For the purposes of this section, "parkland" only includes parks and recreational areas under the jurisdiction of state agencies or local governing bodies. Notwithstanding any contrary provision of this title, the Commissioner of Highways may acquire by gift or purchase any property without a permanent residential structure, or an interest in property, needed to replace parkland that is acquired for the improvement, maintenance, construction, or reconstruction of highways. Land acquired to replace parkland shall be abutting or appurtenant to the property of rights-of-way acquired for the improvement, maintenance, construction, or reconstruction of highways. Before exercising the authority granted by this section, the Commissioner of Highways shall notify the local governing body or state agency having jurisdiction over the parkland and shall obtain the concurrence of the local governing body or state agency that replacement parklands should be acquired and conveyed to the local governing body or state agency in exchange for the parkland needed for the improvement, maintenance, construction, or reconstruction of the highway.

The provisions of this section shall apply only in Albemarle County and the City of Charlottesville.

§ 33.2-1009. Acquisition of residue parcels declared to be in public interest.

The acquisition of such residue parcels in addition to the lands necessary for the immediate use for highway rights-of-way or purposes incidental to the construction, reconstruction, or improvement of public highways is hereby declared to be in the public interest and constitutes a public use as the term public uses is used in Article I, Section 11 of the Constitution of Virginia.

§ 33.2-1010. Use and disposition of residue parcels of land.

The Commissioner of Highways may lease, sell, or exchange such residue parcels of land upon such terms and conditions as in the judgment of the Commissioner of Highways may be in the public interest, provided, however, that the Commissioner of Highways shall not use such parcels for any commercial purpose. The Commissioner of Highways may lease, sell, or exchange such residue parcels of land as may have been acquired under the provisions of the Transportation Development and Revenue Bond Act (§ 33.2-1700 et seq.), upon such terms and conditions as in the judgment of the Commissioner of Highways may be in the public interest. The Commissioner of Highways may lease such parcels of land as may have been acquired under the

provisions of § 33.2-1005 in the event the former owner fails to make the request authorized under § 33.2-1005 to persons other than the former owner, upon such terms and conditions as in the judgment of the Commissioner of Highways may be in the public interest. The provisions of Articles 1 (§ 33.2-900 et seq.) and 2 (§ 33.2-908 et seq.) of Chapter 9 shall not be construed to apply to the disposition of land authorized in this section.

§ 33.2-1011. Right to enter on land to ascertain its suitability for highway and other transportation purposes; damage resulting from such entry.

A. The Commissioner of Highways, through his duly authorized officers, agents, or employees, may enter upon any land in the Commonwealth for the purposes of making examination and survey thereof, including photographing; testing, including soil borings or testing for contamination; making appraisals; and taking such actions as may be necessary or desirable to determine its suitability for highway and other transportation purposes or for any other purpose incidental thereto. Such officers, agents, or servants shall exercise care to protect any improvements, growing crops, or timber in making such examination or survey.

B. Notice shall be sent to the owner by mail, at the address recorded in the tax records, not less than 15 days prior to the first date of the proposed entry. Notice of intent to enter shall be deemed made on the date of mailing.

C. The notice shall include the anticipated date such entry is proposed to be made and the purpose of such entry. Any entry authorized by this section shall be for the purposes of making examination and survey thereof, including photographing; testing, including soil borings or testing for contamination; making appraisals; and taking such other actions as may be necessary or desirable to determine the suitability of such property for highway and transportation purposes, and shall not be deemed a trespass.

D. Notwithstanding the provisions in subsections A and B, nothing shall preclude entry prior to the anticipated date of entry specified in the notice if the property owner or his designated representative agrees to or requests a date of entry prior to the date of entry specified in the notice.

E. The Commissioner of Highways, through his duly authorized officers, agents, or servants, shall make reimbursement for any actual damages to real or personal property resulting from entry upon the property. In any action filed under this section, the court may award the owner his reasonable attorney fees, court costs, and fees for no more than three expert witnesses testifying at trial if (i) the court finds that the Commissioner of Highways maliciously, willfully, or recklessly damaged the owner's property and (ii) the court awards the owner actual damages in an amount 30 percent or more greater than the final written offer of the Commissioner of Highways made no later than 30 days after the filing of an answer in circuit court or the return date in general district court. A proceeding under this subsection shall not preclude the owner from pursuing any additional remedies available to the landowner.

§ 33.2-1012. Limitations in Title 25.1 not applicable to Commissioner of Highways.

Except as to procedure, the Commissioner of Highways shall not be subject to any limitations in Title 25.1 in exercising the power of eminent domain pursuant to this title.

§ 33.2-1013. Notice of exercise of eminent domain power; evidence of value.

A. As used in this section:

"Fair market value" means the price that the real property would bring if it were offered for sale by one who wanted to sell, but was under no necessity, and was bought by one who wanted to buy, but was under no necessity.

"Owner" means any person owning an estate or interest in buildings, structures, or other improvements on real property, which estate or interest is recorded in the official records of the circuit court where the property is located, or improvements for which a permit has been issued by the Commissioner of Highways pursuant to § 33.2-1208. "Owner" does not include trustees or beneficiaries under a deed of trust or any person owning only a security interest in the real property.

B. Notwithstanding anything to the contrary contained in this chapter or in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1:

1. The Commissioner of Highways shall notify every owner, as defined in this section, of a building, structure, or other improvement if the Commissioner of Highways intends to exercise the power of eminent domain in a manner that would result in a taking of the building, structure, or other improvement.

2. The owner of any such building, structure, or other improvement may present evidence of the fair market value of such building, structure, or other improvement in the proceedings described in § 25.1-233, provided such owner has filed a petition for intervention pursuant to § 25.1-218.

3. If the owner of such building, structure, or improvement is different from the owner of the underlying land, then such owner shall not be allowed to proffer any evidence of value that the owner of the underlying land would not be permitted to proffer if the building, structure, or improvement were owned by the owner of the underlying land; and

4. The provisions of this section shall not apply to condemnation proceedings in which the petition for condemnation was filed prior to July 1, 2000.

§ 33.2-1014. Acquisition of interests for exchange with railroad, public utility company, public service corporation or company, political subdivision, or cable television company; relocation of poles, lines, etc.

Whenever any railroad, public utility company, public service corporation or company, political subdivision, or cable television company owns or occupies any privately owned land either under a claim of right or with the apparent acquiescence of the private landowner which the Commissioner of Highways deems necessary and intends to acquire for any highway project, and such land owned or occupied by the railroad, public utility company, public service corporation or company, political subdivision, or cable television company is devoted to a public use, the Commissioner of Highways may acquire by gift, purchase, or by the exercise of the power of eminent domain additional land or easement, right-of-way, or interest in land adjacent to or approximately adjacent to such land needed and proposed to be acquired for such highway project and may then convey the same to the railroad, public utility company, public service corporation or company, political subdivision, or cable television company for use by it in lieu of the land theretofore owned or occupied by it but needed by the Commissioner of Highways for such highway project. The condemnation of such land, easement, right-of-way, or other interest in land to be conveyed to any railroad, public utility company, public service corporation or company, political subdivision, or cable television company shall be governed by the procedure prescribed by this article and may be carried out at the same time if against the same property owner and if against the same landowner or in the same proceedings in which land is condemned for highway purposes. The Commissioner of Highways may, under the same procedure and conditions prescribed by this article, with respect to property needed for highway purposes, enter upon and take possession of such property to be conveyed to any railroad, public utility company, public service corporation or company, political subdivision, or cable television company in the manner provided in §§ 33.2-1018 through 33.2-1027 and proceed with the relocation of the installations of the railroad or public utility company in order that the construction of the highway project may be carried out without delay.

After the acquisition of the land owned or occupied by railroads, public utility companies, public service corporations or companies, political subdivisions, or cable television companies and the acquisition of the additional land, easement, right-of-way, or other interest in land for such railroads, utility companies, public service corporations or companies, political subdivisions, or cable television companies as provided in this section, in the event the poles, lines, or other facilities are not removed by such railroads or utility companies within 60 days from the date of the taking by the Commissioner of Highways, the Commissioner of Highways is vested with the power to remove and relocate such facilities at his own cost.

Any conveyance previously made by the Commissioner of Highways in exchange for land that was needed for a highway project is hereby declared to be valid and effective in all respects.

§ 33.2-1015. Acquisition of land in median of highways for public mass transit; disposition of such property.

When acquiring land for the construction of highways with divided roadways, the Commissioner of Highways may, if he deems it necessary and appropriate, also acquire by gift, purchase, or by the exercise of the power of eminent domain as vested in him by § 33.2-1001, in addition to the land necessary for such highways, sufficient land in the median for use for public mass transit and may convey or otherwise make available the same to a public agency or authority or public service corporation or public service company for the construction and operation thereon of public facilities for mass transit.

Such additional land shall be acquired only after an agreement has been made between the Commissioner of Highways and a public agency or authority or public service corporation or public service company

whereby such agency, authority, corporation, or company has agreed to pay the cost of the additional land acquired and all expense incidental to its acquisition.

The condemnation of such land to be conveyed for use for public mass transit shall be governed by the procedure prescribed by this article and may be carried out at the same time if against the same property owner and if against the same landowner or in the same proceedings in which land is condemned for highway purposes. The Commissioner of Highways may, under the same procedure and conditions prescribed by this article with respect to property needed for highway purposes, enter upon and take possession of such property to be conveyed to a public agency or authority or public service corporation or public service company in the manner provided in §§ 33.2-1018 through 33.2-1027.

The Board is authorized and directed with the consent of the Federal Highway Administration to permit the Washington Metropolitan Area Transit Authority to commence construction of rapid transit and ancillary facilities within the proposed median of Interstate 66 between Glebe Road in Arlington County and Nutley Road in Fairfax County, provided that (i) construction of rapid transit shall conform with highway plans and that construction procedures shall be reviewed and approved by the Commissioner of Highways and (ii) prior to construction of rapid transit, a mutually satisfactory allocation of cost shall be agreed to by the Washington Metropolitan Area Transit Authority, the Board, and the Federal Highway Administration.

§ 33.2-1016. Procedure in general; suits in name of Commissioner of Highways; survival; validation of suits; notice of filing.

A. Proceedings for condemnation under this article shall be instituted and conducted in accordance with the procedures provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, except that the provisions of §§ 33.2-1018 through 33.2-1029 shall be applicable to such proceedings.

B. All suits shall be instituted and conducted in the name of the Commissioner of Highways as petitioner without naming the individual who may be such Commissioner of Highways or acting Commissioner of Highways. In the event of the death, removal, retirement, or resignation of the Commissioner of Highways or acting Commissioner of Highways, the suit shall automatically survive to a successor Commissioner of Highways or acting Commissioner of Highways. All suits heretofore filed in accordance with the provisions of this section are hereby ratified, validated, and confirmed.

C. In addition to any other notices required to be served pursuant to this section, in any proceeding instituted by the Commissioner of Highways under this title, a copy of the notice of the filing of the petition also shall be served, in the same manner as such notice is served upon owners, upon any person owning structures or improvements for which an outdoor advertising permit has been issued by the Commissioner of Highways pursuant to § 33.2-1208.

§ 33.2-1017. Taking highway materials from streams, rivers, and watercourses.

Whenever the Commissioner of Highways determines that it is necessary or desirable to remove materials from the streams, rivers, or watercourses for use on public highways, he shall submit to the Marine Resources Commission his plan for the removal and all conditions relating thereto for its review and concurrence. After receiving the concurrence of the Marine Resources Commission, the Commissioner of Highways may take for use on the public highways in the Commonwealth sand, gravel, rock, and any other materials deemed by him suitable for road purposes from the streams, rivers, and watercourses, title to the bed of which is in the Commonwealth, and in addition to the power of eminent domain already vested in him may acquire by condemnation all property, rights, and easements necessary to enable him to obtain and make use of such materials. All such proceedings shall be governed by the provisions of law governing the exercise by the Commissioner of Highways of the power of eminent domain for state highway purposes.

§ 33.2-1018. Authority to take possession and title to property before or during condemnation; purpose and intent of provisions.

In addition to the exercise of the power of eminent domain prior to the entry upon land being condemned, as provided in this article, the Commissioner of Highways is authorized to acquire title and to enter upon and take possession of such property and rights-of-way, for the purposes set out in § 33.2-1001, as the Commissioner of Highways may deem necessary, and proceed with the construction of such highway, such taking to be made pursuant to §§ 33.2-1019 through 33.2-1029.

It is the intention of this article to provide that such property and rights-of-way may, in the discretion of the Commissioner of Highways, be condemned during or after the construction of the highway, as well as prior thereto, and to direct the fund out of which the judgment of the court in condemnation proceedings shall be paid, and to provide that in all other respects the provisions of this article shall apply, whether the property and rights-of-way are condemned before, during, or after the construction of the highway. However, the authorities constructing such highway under the authority of this article shall use diligence to protect growing crops and pastures and to prevent damage to any property not taken. So far as possible all rights-of-way shall be acquired or contracted for before any condemnation is resorted to.

§ 33.2-1019. Payments into court or filing certificate of deposit before entering upon land.

A. Before entering upon or taking possession of land pursuant to § 33.2-1018, the Commissioner of Highways shall either:

1. Pay into the court wherein condemnation proceedings are pending or are to be instituted such sum as is required by subsection B; or

2. File with the court wherein condemnation proceedings are pending or are to be instituted a certificate of deposit issued by the Commissioner of Highways for such sum as is required by subsection B, which shall be deemed and held for the purpose of this chapter to be payment into the custody of such court.

B. The amount to be paid into the court as provided in subdivision A 1 or represented by a certificate of deposit as provided in subdivision A 2 shall be the amount that the Commissioner of Highways estimates to be the fair value of the land taken, or interest therein sought, and damage done, which estimate shall be based on a bona fide appraisal if required by § 25.1-417; however, such estimate shall not be less than the current assessed value of the land for real estate tax purposes, unless the property has physically changed in a material and substantial way since the current assessment date such that the real estate tax assessment no longer represents a fair valuation of the property, when the entire parcel for which the assessment has been made is to be acquired.

C. If the Commissioner of Highways makes a payment into court as provided in subdivision A 1, the court shall also record a certificate of take pursuant to § 33.2-1021.

D. Payment against a certificate of deposit, when ordered by the court named therein, shall be paid by the Commissioner of Highways.

E. The Commissioner of Highways shall not be permitted to force relocation on improved owner-occupied property until the owner is permitted to withdraw the funds represented by the certificate filed with the court. However, if the owner refuses to withdraw the funds represented by the certificate filed with the court or if the Commissioner of Highways reasonably believes that the owner does not possess clear title to the property being taken, that ownership of the property is disputed, or that certain owners cannot be located, the Commissioner of Highways may petition the court to establish that the owner does not possess clear title, that the ownership of the property is in dispute, that certain owners cannot be located, or that the owner has refused to withdraw the funds represented by the certificate filed with the court, and request that the Commissioner of Highways be given authority to force relocation.

F. Nothing in this section shall make evidence of tax assessments admissible as proof of value in an eminent domain proceeding.

§ 33.2-1020. Payment of certificates of deposit; notice to owner.

A. A certificate of deposit shall be deemed and held for the purpose of this article to be payment into the custody of such court. Payment against any certificate of deposit so issued and countersigned, when ordered by the court named therein, shall be paid by the State Treasurer on warrants of the Comptroller, issued on vouchers signed by the Commissioner of Highways.

B. A duplicate of each certificate of deposit so issued and countersigned shall be kept as a record in the office of the Commissioner of Highways and a copy thereof shall be filed with the State Treasurer.

C. The Commissioner of Highways shall give notice to the owner or tenant of the freehold by registered mail, if known, that a certificate of deposit will be filed.

§ 33.2-1021. Recordation of certificates; transfer of title or interest; land situated in two or more counties or cities.

The certificate of the Commissioner of Highways shall be recorded in the clerk's office of the court where deeds are recorded. Upon such recordation, the interest or estate of the owner of such property shall terminate and the title to such property or interest or estate of the owner shall be vested in the Commonwealth. Such owner shall have such interest or estate in the funds held on deposit by virtue of the certificate as he had in the property taken or damaged, and all liens by deed of trust, judgment, or otherwise upon such property or estate or interest shall be transferred to such funds. The title in the Commonwealth shall be defeasible until the reaching of an agreement between the Commissioner of Highways and such owner, as provided in § 33.2-1027, or the compensation determined by condemnation proceedings as provided in §§ 33.2-1022 through 33.2-1028.

If the land affected by the certificate is situated in two or more counties or cities, the clerk of the court wherein the certificate is recorded shall certify a copy of such certificate to the clerk of the court of the counties or cities in which any portion of the land lies, who shall record the same in his deed book and index it in the name of the person who had the land before and also in the name of the Commonwealth.

§ 33.2-1022. Certificates to describe land and list owner.

The certificate shall set forth the description of the land or interest therein being taken or damaged and, if known, the owner.

§ 33.2-1023. Proceedings for distribution of funds; effect of acceptance of payments; evidence as to amount of deposit or certificate.

A. Any person or persons shown by a certificate to be entitled thereto may petition the court for the distribution of all or any part of the funds deposited with the court pursuant to subdivision A 1 of § 33.2-1019 or represented by a certificate of deposit filed pursuant to subdivision A 2 of § 33.2-1019.

B. A copy of such petition shall be served on the Commissioner of Highways, his deputy, or any attorney authorized to accept service with a notice, returnable to the court or judge not less than 21 days after such service, to show cause, if any, why such amount should not be distributed in accordance with the prayers of the petition.

C. If the Commissioner of Highways does not, on or before the return day of the petition, show such cause, and if the record in the proceeding does not disclose any denial or dispute with respect thereto, the court shall enter an order directing the distribution of such amount in accordance with the prayers of the petition. However, in the case of a nonresident petitioner the court may require a bond before ordering the distribution.

D. If funds have been deposited with the court pursuant to subdivision A 1 of § 33.2-1019, any interest that has accrued on the funds shall be payable to the person or persons entitled to receive such funds.

E. If funds are not then on deposit with the court but are represented by a certificate of deposit filed pursuant to subdivision A 2 of § 33.2-1019, a certified copy of such order shall forthwith be sent to the Commissioner of Highways by the clerk. It shall be the duty of the Commissioner of Highways to deposit such funds with the court within 21 days of the date of such order.

F. Interest shall be payable on funds represented by a certificate of deposit from the date of filing of the certificate of deposit until the funds are paid into court at the rate of interest established pursuant to § 6621(a)(2) of the Internal Revenue Code of 1954, as amended or renumbered, for the month in which the order pursuant to this section is entered. However, interest shall not accrue if an injunction is filed against the Department that enjoins the taking of the property described in the certificate.

G. If the Commissioner of Highways shows such cause, or if the record in the proceeding discloses any denial or dispute as to the persons entitled to such distribution or to any interest or share therein, the court shall direct such proceedings as are provided by § 25.1-240 for the distribution of awards.

H. However, the acceptance of such payment shall not limit the amount to be allowed by a commissioner in a condemnation proceeding, nor limit the rights of any party or parties to the proceeding to appeal from any decision therein; nor shall any party to such proceeding be entitled to introduce evidence of any amount deposited with the court or represented by a certificate, nor of any amount that has been accepted by any party entitled thereto pursuant to this section.

§ 33.2-1024. Reformation, alteration, revision, amendment, or invalidation of certificate.

Upon the recordation of such certificate, no reformation, alteration, revision, amendment, or invalidation shall be made for any purpose without the prior consent of the court wherein such certificate is recorded. The court or judge in vacation shall have jurisdiction to reform, alter, revise, amend, or invalidate in whole or in part any certificate; to correct mistakes in the description of the property affected by such certificate; to correct the name of the owner in the certificate; to correct any other error that may exist with respect to such certificate; or for any other purpose. A petition filed by the Commissioner of Highways with the court setting forth any error made in such certificate, or the necessity of any change therein, shall be deemed sufficient basis for the reformation, alteration, revision, amendment, or invalidation in whole or in part of such certificate. The court may enter an order permitting the reformation, alteration, revision, amendment, or invalidation in whole or in part, and such order, together with any revised certificate that may be necessary, shall be spread in the current deed book. The filing of any certificate pursuant to the provisions of this section shall not alter the date of taking as established by the filing of the original certificate pursuant to § 33.2-1021 as to any land that is included in the amended certificate, and no such amended certificate shall include any land not in the original certificate. Nothing herein contained shall be construed to prohibit or preclude any person damaged thereby from showing in the proper proceeding the damage suffered by reason of such mistake or the invalidation of a certificate of deposit as herein provided.

§ 33.2-1025. When condemnation proceedings instituted; payment of compensation or damages; order confirming award; recording.

Within 180 days after the recordation of such certificate, if the Commissioner of Highways and the owner of such lands or interest therein taken or damaged by the Commissioner of Highways are unable to agree as to the compensation or damages, if any, caused thereby, or such consent cannot be obtained due to the incapacity of the owner, or because such owner is unknown or cannot with reasonable diligence be found within the Commonwealth, the Commissioner of Highways shall institute condemnation proceedings, as provided in this article, unless said proceedings shall have been instituted prior to the recordation of such certificate. The amount of such compensation and damages, if any, awarded to the owner in such proceedings shall be paid out of the appropriations to the Department. The final order confirming the award of the Commissioner of Highways shall confirm absolute and indefeasible title to the land, or interest therein sought, in the Commonwealth and shall be spread in the current deed book.

§ 33.2-1026. Awards in greater or lesser amounts than deposit; interest.

A. If the amount of an award in a condemnation proceeding is greater than that deposited with the court or represented by a certificate of deposit, the excess amount, together with interest accrued on such excess amount, shall be paid into court for the person entitled thereto.

B. Interest shall accrue on the excess amount at the rate of interest established pursuant to § 6621(a)(2) of the Internal Revenue Code of 1954, as amended or renumbered, compiled by the Department for the month in which the award is rendered, computed from the date of such deposit to the date of payment into court, and shall be paid into court for the person or persons entitled thereto. However, any (i) interest accruing after June 30, 1970, and prior to July 1, 1981, shall be paid at the rate of six percent; (ii) interest accruing after June 30, 1981, and prior to July 1, 1994, shall be paid at the rate of eight percent; and (iii) interest accruing after June 30, 1994, and prior to July 1, 2003, shall be paid at the general account composite rate, compiled by the Department of the Treasury of Virginia for the month in which the award is rendered.

C. If the amount of an award in a condemnation proceeding is less than that deposited with the court or represented by a certificate of deposit, and the person or persons entitled thereto have received a distribution of the funds pursuant to § 33.2-1023, the Commissioner of Highways shall recover (i) the amount of such excess and (ii) interest on such excess at the rate of interest established pursuant to § 6621(a)(2) of the Internal Revenue Code of 1954, as amended or renumbered. If any person has been paid a greater sum than that to which he is entitled as determined by the award, judgment shall be entered for the Commissioner of Highways against such person for the amount of such excess and interest. However, the Commissioner of Highways shall not be entitled to recover the amount of such excess and interest in the event the Commissioner of Highways acquired, by virtue of the certificate, an entire parcel of land containing a dwelling, multiple-

family dwelling, or building used for commercial purposes at the time of initiation of negotiations for the acquisition of such property.

§ 33.2-1027. Agreements as to compensation; petition and order of court thereon; disposition of deposit.

At any time after the recordation of such certificate, but prior to the institution of condemnation proceedings, if the Commissioner of Highways and the owner of the land or interest therein taken or damaged are able to agree as to compensation for the land taken and damages, if any, caused by such taking, the Commissioner of Highways shall file with the court a petition so stating, with a copy of the agreement attached. If condemnation proceedings are already pending at the time of reaching such agreement, no such petition shall be required, but the motion for dismissal of such proceedings shall contain an averment that such agreement has been reached. Upon the filing of such petition or motion to dismiss, the court shall thereupon enter an order confirming absolute and indefeasible title to the land or interest therein in the Commonwealth. Such order shall be spread in the current deed book. Upon entry of such order, the Commissioner of Highways and State Treasurer shall be relieved of further obligation by virtue of having filed such certificate of deposit with the court.

If it shall appear from such petition and agreement, or motion to dismiss a pending suit, that no person other than those executing such agreement are entitled to the fund on deposit, the court shall direct that such fund, after payment therefrom of any taxes that may be charged against such land taken, be disbursed and distributed in accordance with the statement or charge in the petition or motion among the parties or persons entitled thereto. If it shall appear that a controversy exists as to the persons entitled to such fund, such distribution shall be made in accordance with the provisions of § 33.2-1023.

§ 33.2-1028. Enhancement to be offset against damage.

In all cases under the provisions of this article, the enhancement, if any, in value of the remaining property of the landowner by reason of the construction or improvement contemplated or made by the Commissioner of Highways shall be offset against the damage, if any, resulting to such remaining property of such landowner by reason of such construction or improvement. However, such enhancement in value shall not be offset against the value of the property taken, and if such enhancement in value exceeds the damage, there shall be no recovery against the landowner for such excess.

§ 33.2-1029. Remedy of landowners under certain conditions.

Whenever the Commissioner of Highways enters upon and takes possession of property pursuant to §§ 33.2-1018, 33.2-1019, and 33.2-1020 and has not instituted condemnation proceedings within 180 days after the recordation of a certificate as required by § 33.2-1025, whether the construction of the highway project has been completed or not, the property owner may, if no agreement has been made with the Commissioner of Highways as to compensation and damage, if any, petition the circuit court of the county or the court of the city in which such cases are tried and in which the greater portion of the property lies for the appointment of commissioners or a jury to determine just compensation for the property taken and damages done, if any. A copy of such petition shall be served upon the Commissioner of Highways at least 10 days before it is presented to the court, and the Commissioner of Highways shall file an answer thereto within five days after the petition is so presented. If the court finds that a reasonable time has elapsed for the completion of the construction of the highway project or that 60 days have elapsed since the completion of the construction of the highway project or that more than 180 days have elapsed since the Commissioner of Highways entered upon and took possession of the property, without condemnation proceedings being instituted and without an agreement having been made between the property owner and the Commissioner of Highways as to compensation and damages, if any, commissioners or a jury shall be appointed to ascertain the amount of compensation to be paid for the property taken and damages done, if any. The proceedings shall thereafter be governed by the procedure prescribed by Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 insofar as the same may be applicable.

§ 33.2-1030. Adjustment or relocation of certain billboard signs.

A. Notwithstanding any other provision of law, general or special, whenever land is acquired due to the widening, construction, or reconstruction of any highway as defined in § 33.2-1200 by purchase or by use of the power of eminent domain and upon such land is situated a lawfully erected billboard sign as defined in § 33.2-1200, such billboard sign may be relocated as provided in this section.

B. If a billboard sign meets all requirements under the provision of this title and § 4.1-113.1 in the case of outdoor alcoholic beverage advertising, but is considered nonconforming solely due to a local ordinance, the owner of the billboard sign, at his sole cost and expense, shall have the option to relocate such billboard sign to another location as close as practicable on the same property, adjusting the height or angle of the billboard sign to a height or angle that restores the visibility of the billboard sign to the same or comparable visibility as before the taking, provided the new location also meets all the requirements of this title and regulations adopted pursuant thereto.

C. Nothing in this section shall authorize the owner of such billboard sign to increase the size of the sign face, and a relocated billboard sign shall continue to be nonconforming in its new location unless the relocated billboard sign becomes conforming in its new location under the local ordinance. The provisions of § 33.2-1219 shall apply to any relocation.

Article 2.

Acquisition of Land Used as Cemeteries.

§ 33.2-1031. Commissioner of Highways may enter into agreement with person, church, association, etc.

Whenever it becomes necessary for the Commissioner of Highways to acquire land or other interest therein for the purposes set forth in this title, and such land to be acquired is a part or the whole of a cemetery or graveyard owned by any person, church, association, corporation, or other legal entity that has the legal authority to make disposition of the same, the Commissioner of Highways may enter into agreements with such person, church, association, corporation, or other legal entity for the removal of any remains that may be interred upon the land. Such agreement shall provide for reinterment in some suitable repository. For purposes of this article, the sprinkling of ashes or their burial in a biodegradable container on private residential property, not subject to regulation under Chapter 3 (§ 57-22 et seq.) of Title 57, shall not constitute the creation of a cemetery or graveyard.

§ 33.2-1032. Commissioner of Highways may file petition for condemnation when no agreement can be reached; notice of condemnation proceedings.

In the event no agreement can be reached as provided in § 33.2-1031 or whenever such land is a part or the whole of a cemetery or graveyard owned by persons unknown or by any person, church, association, corporation, or other legal entity not having legal authority to make disposition of the same, the Commissioner of Highways shall petition the court of the city or county in which the land is situated and in which condemnation proceedings are instituted to acquire land for the purpose of condemning such land and having the remains interred in such cemetery or graveyard removed to some suitable repository. To such petition the owner of the land and next of kin of those interred therein, if known, shall be made defendants and served with notice. If such owner and next of kin are unknown, are less than 18 years of age, have been adjudicated insane or incompetent, or are nonresidents of the Commonwealth, such notice shall be served in the manner prescribed by Chapter 2 (§ 25.1-200 et seq.) of Title 25.1.

§ 33.2-1033. Contents of petition for condemnation.

The contents of such petition shall comply with all statutory requirements prescribed for the exercise of the power of eminent domain by the Commissioner of Highways and shall contain the reasons why it is practical to acquire such land and remove any remains that may be interred therein.

§ 33.2-1034. Removal and reinterment of remains; other proceedings.

The trial court shall determine a suitable repository for reinterment and the manner in which the removal and reinterment is to be undertaken and shall tax the cost and expense of such removal and reinterment against the Commissioner of Highways. Insofar as possible and reasonable, the court shall consider the wishes of the next of kin of those interred in such graves in making the determination as to a suitable repository and manner of removal and reinterment. All other proceedings in the condemnation of such land and the determination of just compensation for such taking and damages suffered shall be conducted in accordance with the statutes made and provided for the exercise of the power of eminent domain by the Commissioner of Highways.

CHAPTER 11.

HIGHWAY CONSTRUCTION CONTRACTS AND SUITS; HIGHWAY CONTRACTORS' ASSOCIATION.

Article 1.

Highway Construction Contracts, Limitations on Suits, and Adjustment of Claims.

§ 33.2-1100. Highway construction contracts.

A. Every contractor whose bid is accepted shall, before commencing work, enter into a contract with the Commissioner of Highways that shall fully set out the time when work shall commence and when the contract shall be completed as well as the time and manner for the payment for the work. Whenever the Commissioner of Highways or his designee publicly opens and announces all bids received for each invitation to bid, it shall be announced at the same time if the lowest read bid exceeds the maximum tolerance of the Department's estimate for the work represented by that bid.

B. The contract shall require that the contractor comply with all requirements, conditions, and terms of the contract, including environmental permits that are part of the contract. If the contractor violates a contract provision and the violation results in environmental damage or if the contractor violates environmental laws or environmental permits, the Department may suspend the contractor from future bidding or initiate debarment. In addition, the Department may recover either (i) the loss or damage that the Department suffers as a result of such violation or (ii) any liquidated damages established in such contract plus (iii) reasonable attorney fees and expert witness fees. Any damages and costs collected under this section shall be deposited into the Transportation Trust Fund and used for transportation purposes as determined by the Board.

§ 33.2-1101. Submission of claims; initial investigation and notice of decision; appearance before Commissioner of Highways; further investigation and notice of decision; settlement.

A. Upon the completion of any contract for the construction of any state highway project awarded by the Board or by the Commissioner of Highways to any contractor, if the contractor fails to receive such settlement as he claims to be entitled to under the contract for himself or for his subcontractors or for persons furnishing materials for the contract for costs and expenses caused by the acts or omissions of the Department, he may, within 60 days after the final estimate date, deliver to the Department, through proper administrative channels as determined by the Department, a written claim for such amount to which he deems himself, his subcontractors, or his material persons entitled under the contract. The final estimate date shall be set forth in a letter from the Department to the contractor sent by certified mail. The claim shall set forth the facts upon which the claim is based, provided that written notice of the contractor's intention to file such claim shall have been given to the Department at the time of the occurrence or beginning of the work upon which the claim and subsequent action is based. Within 90 days from receipt of such claim, the Department shall make an investigation and notify the claimant in writing by certified mail of its decision. The claimant and the Department may, however, mutually extend such 90-day period for another 30 days.

B. If dissatisfied with the decision, the claimant shall, within 30 days from receipt of the Department's decision, notify the Commissioner of Highways, in writing, that he desires to appear before him, either in person or through counsel, and present any additional facts and arguments in support of his claim as previously filed.

C. The Commissioner of Highways shall schedule such appearance to be held within 30 days of receiving the claimant's written request. The claimant and the Commissioner of Highways may, however, mutually agree to schedule such appearance to be held after 30 days but before 60 days from the receipt of the claimant's written request.

D. Within 45 days from the date of the appearance before him, the Commissioner of Highways shall make an investigation of the claim and notify the contractor in writing of his decision. The claimant and the Commissioner of Highways may, however, mutually agree to extend such 45-day period for another 30 days. If the Commissioner of Highways deems that all or any portion of a claim is valid, he shall have the authority to negotiate a settlement with the contractor, but any such settlement shall be subject to the provisions of § 2.2-514.

E. Failure of the Department or the Commissioner of Highways to render a decision within the time period specified in subsections A and D, or within such other period as has been mutually agreed upon as provided in this section, shall be deemed a denial of the claim.

If the Commissioner of Highways determines that a claim has been denied as the result of an administrative oversight, then the Department reserves the right to reconsider the claim.

§ 33.2-1102. Limitation of suits on contracts.

No suit or action shall be brought against the Department by a contractor or any persons claiming under him or on behalf of a subcontractor of the contractor or a person furnishing materials for the contract to the contractor on any contract executed pursuant to this article or by others on any claim arising from the performance of the contract by the contractor, subcontractor, or person furnishing materials to the contractor, unless the claimant has exhausted the review process provided by § 33.2-1101. Further, no such suit or action shall be brought unless such suit or action is brought within 12 months from receipt of the decision of the Commissioner of Highways. In no event shall any delay therein on the part of the contractor, subcontractor, or person furnishing materials be construed as a reason for extending the time within which such suit or action must be brought. In any case brought against the Department on behalf of a subcontractor or person furnishing materials to the contractor, lack of privity between the parties shall be no defense; however, any such case brought on behalf of a subcontractor or person furnishing materials to the contractor shall only be brought for costs and expenses caused by the acts or omissions of the Department and shall not be brought for costs and expenses caused by the contractor.

§ 33.2-1103. Civil action.

As to such portion of the claim as is denied by the Commissioner of Highways, the contractor may institute a civil action for such sum as he claims to be entitled to under the contract for himself or for his subcontractors or for persons furnishing materials for the contract by the filing of a petition in the Circuit Court of the City of Richmond or where the highway project that is the subject of the contract is located. Any civil action brought on behalf of a subcontractor or person furnishing materials for the contract shall only be brought for costs and expenses caused by the acts or omissions of the Department and shall not be brought for costs and expenses caused by the contractor. Trial shall be by the court without a jury. The submission of the claim to the Department within the time and as set out in § 33.2-1101 shall be a condition precedent to bringing an action under this article and the Department shall be allowed to assert any and all defenses in a case brought by or on behalf of the subcontractor or a person furnishing materials to the contractor which are available to the contractor.

§ 33.2-1104. Application of article; existing contracts.

The provisions of this article shall apply to all contracts executed and proceedings initiated after June 30, 1976, and may be made applicable to existing contracts by mutual consent of the contracting parties.

§ 33.2-1105. Provisions of article deemed part of contract.

The provisions of this article shall be deemed to enter into and form a part of every contract entered into between the Board and any contractor on or after July 1, 1976, and no provision in said contracts shall be valid that is in conflict herewith.

Article 2.

Highway Contractors' Association.

§ 33.2-1106. Definitions.

For the purposes of this article:

"Highway contractors' association" means any association, bureau, agency, or other medium, incorporated or unincorporated, whose object or work is to promote the common welfare of, furnish information to, promote cooperation among, stimulate the demand for the services of, or advertise the members thereof.

"Member of highway contractors' association" means any individual partnership, or corporation engaged in contracting for the construction, repair, and maintenance of highways and highway bridges and for supplying labor, material, machinery, and supplies for use in highways and bridges that is a member of, stockholder in, subscriber of, or contributor to, or that is in any way affiliated with, any highway contractors' association.

§ 33.2-1107. Statements to be furnished.

Every highway contractors' association domiciled in the Commonwealth shall, upon request from the Secretary of the Commonwealth, within 30 days of such request, but no more often than once a calendar year, furnish in writing to the Secretary of the Commonwealth the following information:

1. The names and post office addresses of all of its members. When any member is a firm, the names and addresses of the members of the firm shall be furnished. When any member is a corporation, the names of the officers of the corporation shall be furnished.

2. The names and post office addresses of the officers of the highway contractors' association and the duties and salaries of the officers.

3. The property and income of the highway contractors' association and by whom the same is paid.

4. An itemized statement of the expenditures of such association.

5. A copy of the charter and bylaws, if incorporated, and a copy of the constitution and bylaws, if unincorporated, of such association.

Such statements shall become public records.

§ 33.2-1108. Papers, accounts, and records open to examination by certain officers.

All papers, accounts, and records of every nature of every highway contractors' association, a member of which submits a bid for any construction, maintenance, or repair of any public highway or bridge or for the supplying of labor, material, or supplies for any such construction, repair, or maintenance, whether such highway association is domiciled in Virginia or is a foreign highway contractors' association doing business in Virginia, shall be at all times during business hours open to examination and inspection by the Governor, the Attorney General, the Comptroller, the Auditor of Public Accounts, the Board and any member thereof, and the duly authorized agent or representative of any of such officers or of the Board.

§ 33.2-1109. Effect of refusal to permit or withholding from examination of papers, etc.

If any highway contractors' association, whether domiciled in Virginia or not, on application of any person authorized by this article to examine and inspect its records, refuses to permit such examination and inspection of its papers, accounts, and records, or fails to produce at its principal office for examination and inspection any of its papers, accounts, or records when requested so to do, or knowingly withholds from examination and inspection any of its papers, accounts, and records, for the purpose of secreting any of its acts or activities or the amount or sources of or the use made of its revenue, the person requesting or making such examination and inspection shall report the fact to the Governor, who shall certify the fact to the Commissioner of Highways.

No contract for highway or highway bridge construction, repair, or maintenance or for the supplying of any labor, materials, or supplies for such construction, repair, or maintenance shall be thereafter let to any member of such association until the Governor has certified to the Board that a full examination and inspection of the papers, accounts, and records of such association has been made with the free consent and cooperation of such association and that such examination and inspection discloses nothing in the purposes, methods, or activities of such association detrimental to the public interest or tending to prevent competition in or increase the cost of highway and highway bridge construction, repair, or maintenance in the Commonwealth and that none of its revenue has been used for political purposes.

§ 33.2-1110. Effect of using certain methods or engaging in certain activities.

If upon any such inspection or examination as is provided for in this article it is found that any highway contractors' association of which any individual, partnership, or corporation holding a contract for the construction, maintenance, or repair of any public highway or bridge or for supplying any labor, materials, or supplies for any such construction, repair, or maintenance is a member has made use of methods or engaged in activities tending to prevent competition in the bidding on such contract or to increase the cost of such contract to the Commonwealth or county or has brought to bear or endeavored to bring to bear political influence to secure for such member such contract, then the Board may, at its option, cancel and annul such contract, paying thereon for the work done or labor, material, and supplies furnished only the reasonable value of the work done or labor, material, and supplies furnished.

§ 33.2-1111. Certificate to be filed with bid for highway or bridge construction, etc.

Every individual, partnership, or corporation bidding upon any proposed contract for the construction, repair, or maintenance of any part of any public highway or bridge and for supplying any labor, material, or supplies to be used in any such construction, repair, or maintenance shall file with such bid a sworn statement giving the name and location of the principal office of every highway contractors' association of which it is or has been a member during the preceding 12 months. No bid not accompanied by such certificate shall be

considered by the Board or the Commissioner of Highways in letting any contract bid upon, nor shall any such contract be let by the Board or the Commissioner of Highways to any bidder failing to file the certificate required by this section.

§ 33.2-1112. Affidavit to be filed with bid upon work.

Every member of any highway contractors' association who bids upon any work let by the Board or the Commissioner of Highways shall file with his bid an affidavit in substance as follows: that the bidder neither directly nor indirectly has entered into any combination or arrangement with any person, firm, or corporation or entered into any agreement the effect of which is to prevent competition or increase the cost of construction or maintenance of highways or bridges.

The Board or the Commissioner or Highways shall prescribe the form of this affidavit and no bid shall be accepted unless accompanied by such affidavit.

CHAPTER 12.

OUTDOOR ADVERTISING IN SIGHT OF PUBLIC HIGHWAYS.

Article 1.

General Policies and Regulations.

§ 33.2-1200. Policy; definitions.

A. In order to promote the safety, convenience, and enjoyment of travel on and protection of the public investment in highways within the Commonwealth, attract tourists and promote the prosperity, economic well-being, and general welfare of the Commonwealth, and preserve and enhance the natural scenic beauty or aesthetic features of the highways and adjacent areas, the General Assembly declares it to be the policy of the Commonwealth that the erection and maintenance of outdoor advertising in areas adjacent to the rights-of-way of the highways within the Commonwealth shall be regulated in accordance with the terms of this article and regulations promulgated by the Board pursuant thereto.

B. As used in this article, unless the context requires a different meaning:

"Advertisement" means any writing, printing, picture, painting, display, emblem, drawing, sign, or similar device that is posted or displayed outdoors on real property and is intended to invite or to draw the attention of or solicit the patronage or support of the public to any goods, merchandise, real or personal property, business, services, entertainment, or amusement manufactured, produced, bought, sold, conducted, furnished, or dealt in by any person. "Advertisement" includes any part of an advertisement recognizable as such.

"Advertising structure" means any rigid or semirigid material, with or without any advertisement displayed thereon, situated upon or attached to real property outdoors, primarily or principally for the purpose of furnishing a background or base or support upon which an advertisement may be posted or displayed.

"Area of an advertising structure" means the area determined from its outside measurements, excluding as a part thereof the height and overall width of supports and supporting structure and any other portion or portions thereof beneath the normal area upon which an advertisement is posted or intended to be posted.

"Billboard sign" means any sign, advertisement, or advertising structure as defined in this section owned by a person, firm, or corporation in the business of outdoor advertising.

"Business of outdoor advertising" means the erection, use, or maintenance of advertising structures or the posting or display of outdoor advertisements by any person who receives profit gained from rentals or any other compensation from any other person for the use or maintenance of such advertising structures or the posting or display of such advertisements, except reasonable compensation for materials and labor used or furnished in the actual erection of advertising structures or the actual posting of advertisements. "Business of outdoor advertising" does not include the leasing or rental of advertising structures or advertisements used to advertise products, services, or entertainment sold or provided on the premises where the advertising structures or advertisement is located.

"Centerline of the highway" means a line equidistant from the edges of the median separating the main traveled ways of a divided highway or the centerline of the main traveled way of a nondivided highway.

"Distance from edge of a right-of-way" means the horizontal distance measured along a line normal or perpendicular to the centerline of the highway.

"Federal-aid primary highway" means any highway within that portion of the primary state highway system as established and maintained under Article 2 (§ 33.2-310 et seq.) of Chapter 3, including extensions of such system within municipalities, that has been approved by the Secretary of Transportation pursuant to 23 U.S.C. § 103(b), as that system existed on June 1, 1991.

"Highway" means every way or place of whatever nature open to the use of the public for purposes of vehicular travel in the Commonwealth.

"Historic place, museum, or shrine" includes only places that are maintained wholly at public expense or by a nonprofit organization.

"Information center" means an area or site established and maintained at rest areas for the purpose of informing the public of places of interest within the Commonwealth and providing such other information as the Commonwealth may consider desirable.

"Interchange" means a grade separated intersection with one or more turning roadways for travel between intersection legs, or an intersection at grade, where two or more highways join or cross.

"Lawfully erected" means any sign that was erected pursuant to the issuance of a permit from the Commissioner of Highways under § 33.2-1208, unless the local governing body has evidence of noncompliance with ordinances in effect at the time the sign was erected.

"Legible" means capable of being read without visual aid by a person of normal visual acuity.

"Maintain" means to allow to exist.

"Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main traveled way. "Main traveled way" does not include such facilities as frontage roads, turning roadways, or parking areas.

"National Highway System" means the federal-aid highway system referenced in 23 U.S.C. § 103(b), and regulations adopted pursuant thereto. For the purpose of this article, outdoor advertising controls on the National Highway System shall be implemented as those highways are designated and approved by congressional action or designation by the U.S. Secretary of Transportation and such designation and approval shall be kept on file in the central office of the Department of Transportation and placed in the minutes of the Commonwealth Transportation Board by the Commissioner of Highways. Prior to congressional approval or designation by the U.S. Secretary of Transportation, highways classified as National System of Interstate and Defense Highways, Dwight D. Eisenhower National System of Interstate and Defense Highways, Interstate System, or federal-aid primary highway as defined in this section shall be considered as the National Highway System.

"Nonconforming sign," "nonconforming advertisement," or "nonconforming advertising structure" means one that was lawfully erected adjacent to any highway in the Commonwealth but that does not comply with the provisions of state law, state regulations, or ordinances adopted by local governing bodies passed at a later date or that later fails to comply with state law, state regulations, or ordinances adopted by local governing bodies due to changed conditions.

"Person" includes an individual, partnership, association, or corporation.

"Post" means post, display, print, paint, burn, nail, paste, or otherwise attach.

"Real property" includes any property physically attached or annexed to real property in any manner whatsoever.

"Rest area" means an area or site established and maintained within or adjacent to the right-of-way or under public supervision or control for the convenience of the traveling public.

"Scenic area" means any public park or area of particular scenic beauty or historical significance designated as a scenic area by the Board.

"Sign" means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing that is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any highway.

"Trade name" includes a brand name, trademark, distinctive symbol, or other similar device or thing used to identify particular products or services.

"Traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

"Turning roadway" means a connecting roadway for traffic turning between two intersection legs of an interchange.

"Urban area" means an urbanized area or, in the case of an urbanized area encompassing more than one state, that part of the urbanized area within the Commonwealth, or an urban place.

"Urbanized area" means an area so designated by the U.S. Census Bureau, within boundaries fixed by the Commissioner of Highways, in his discretion, in cooperation with the governing bodies of the localities affected and the appropriate federal authority. Such boundaries shall, at a minimum, encompass the entire urbanized area within a state as designated by the U.S. Census Bureau.

"Urban place" means an area so designated by the U.S. Census Bureau having a population of 5,000 or more and not within any urbanized area, within boundaries fixed by the Commissioner of Highways, in his discretion, in cooperation with the governing bodies of the localities affected and the appropriate federal authority. Such boundaries shall, at a minimum, encompass the entire urban place designated by the U.S. Census Bureau.

"Virginia byway" and "scenic highway" means those highways designated by the Board pursuant to § 33.2-405. For the purposes of this article, a Virginia byway means a scenic byway as referenced in 23 U.S.C. § 131(s).

"Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

§ 33.2-1201. Enforcement of provisions by Commissioner of Highways.

The Commissioner of Highways shall administer and enforce the provisions of this article. He may assign to division engineers and other employees in the Department such duties other than discretionary powers as he may deem appropriate.

§ 33.2-1202. Territory to which article applies.

The territory under the jurisdiction of the Commissioner of Highways for the purposes of this article shall include all of the Commonwealth, exclusive of that portion thereof that lies within the corporate limits of municipalities, except the jurisdiction of the Commissioner of Highways shall apply to all the territory within municipalities on which signs, advertisements, or advertising structures are visible from the main traveled way of any Interstate System highway, federal-aid primary highway as that system existed on June 1, 1991, or National Highway System highway.

§ 33.2-1203. Entry upon lands; hindering Commissioner of Highways or agent.

The Commissioner of Highways and all employees under his direction may enter upon such lands as may be necessary in the performance of their functions and duties as prescribed by this article. Any person who hinders or obstructs the Commissioner of Highways or any assistant or agent of the Commissioner of Highways in carrying out such functions and duties is guilty of a Class 1 misdemeanor.

§ 33.2-1204. Excepted signs, advertisements, and advertising structures.

The following signs and advertisements, if securely attached to real property or advertising structures, and the advertising structures or parts thereof upon which they are posted or displayed are excepted from all the provisions of this article except those enumerated in §§ 33.2-1202, 33.2-1205, and 33.2-1208, subdivisions 2 through 12 of § 33.2-1216, and §§ 33.2-1217 and 33 2-1227:

1. Advertisements securely attached to a place of business or residence and no more than 10 advertising structures, with a combined total area of such advertisements and advertising structures, exclusive of the area occupied by the name of the business, owner, or lessee, of no more than 500 square feet, erected or maintained, or caused to be erected or maintained, by the owner or lessee of such place of business or residence, within 250 feet of such place of business or residence or located on the real property of such place of business or residence and relating solely to merchandise, services, or entertainment sold, produced, manufactured, or furnished at such place of business or residence;

2. Signs erected or maintained, or caused to be erected or maintained, on any farm by the owner or lessee of such farm and relating solely to farm produce, merchandise, services, or entertainment sold, produced, manufactured, or furnished on such farm;

3. Signs upon real property posted or displayed by the owner, or by the authority of the owner, stating that the property upon which the sign is located, or a part of such property, is for sale or rent or stating any data

pertaining to such property and its appurtenances and the name and address of the owner and the agent of such owner;

4. Official notices or advertisements posted or displayed by or under the direction of any public or court officer in the performance of his official or directed duties or by trustees under deeds of trust, deeds of assignment, or other similar instruments;

5. Danger or precautionary signs relating to the premises or signs warning of the condition of or dangers of travel on a highway erected or authorized by the Commissioner of Highways; forest fire warning signs erected under authority of the State Forester; and signs, notices, or symbols erected by the United States government under the direction of the U.S. Forest Service;

6. Notices of any telephone company, telegraph company, railroad, bridges, ferries, or other transportation company necessary in the discretion of the Commissioner of Highways for the safety of the public or for the direction of the public to such utility or to any place to be reached by it;

7. Signs, notices, or symbols for the information of aviators as to location, direction, and landings and conditions affecting safety in aviation erected or authorized by the Commissioner of Highways;

8. Signs of 16 square feet or less and bearing an announcement of any locality, or historic place, museum, or shrine situated in the Commonwealth advertising itself or local industries, meetings, buildings, or attractions, provided such signs are maintained wholly at public expense or at the expense of such historic place, museum, or shrine;

9. Signs or notices of two square feet or less placed at a junction of two or more roads in the primary state highway system denoting only the distance or direction of a church, residence, or place of business, provided such signs or notices do not exceed a reasonable number in the discretion of the Commissioner of Highways;

10. Signs or notices erected or maintained upon property giving the name of the owner, lessee, or occupant of the premises;

11. Advertisements and advertising structures within the corporate limits of cities and towns, except as specified in § 33.2-1202;

12. Historical markers erected by duly constituted and authorized public authorities;

13. Highway markers and signs erected or caused to be erected by the Commissioner of Highways or the Board or other authorities in accordance with law;

14. Signs erected upon property warning the public against hunting, fishing, or trespassing thereon;

15. Signs erected by Red Cross authorities relating to Red Cross Emergency Stations, with authority hereby expressly given for the erection and maintenance of such signs upon the right-of-way of all highways in the Commonwealth at such locations as may be approved by the Commissioner of Highways;

16. Signs advertising agricultural products and horticultural products, or either, when such products are produced by the person who erects and maintains the signs, provided that restriction of the location and number of such signs shall be in the sole discretion of the Commissioner of Highways;

17. Signs advertising only the name, time, and place of bona fide agricultural, county, district, or state fairs, together with announcements of related special events that do not consume more than 50 percent of the display area of such signs, provided the person who posts the signs or causes them to be posted shall post a cash bond as may be prescribed by the Commissioner of Highways adequate to reimburse the Commonwealth for the actual cost of removing such signs that are not removed within 30 days after the last day of the fair so advertised;

18. Signs of no more than eight square feet, or one sign structure containing more than one sign of no more than eight square feet, that denote only the name of a civic service club or church, location and directions for reaching same, and time of meeting of such organization, provided such signs or notices do not exceed a reasonable number as determined by the Commissioner of Highways; and

19. Notwithstanding the provisions of § 33.2-1224, signs containing advertisements or notices that have been authorized by a county and that are securely affixed to a public transit passenger shelter that is owned by that county, provided that no advertisement shall be placed within the right-of-way of the Interstate System, National Highway System, or federal-aid primary system of highways in violation of federal law. The prohibition in subdivision 7 of § 33.2-1216 against placing signs within 15 feet of the nearest edge of the pavement of any highway shall not apply to such signs. The Commissioner of Highways may require the

removal of any particular sign located on such a shelter as provided in this subdivision if, in his judgment, such sign constitutes a safety hazard.

§ 33.2-1205. License required of outdoor advertisers.

No person shall engage or continue in the business of outdoor advertising in the Commonwealth outside the corporate limits of municipalities or within the corporate limits of municipalities if their off-premises sign, advertisement, or advertising structure is visible from the main traveled way of any Interstate System, federal-aid primary, or National Highway System highway without first obtaining a license therefor from the Commissioner of Highways. The fee for such license hereby imposed for revenue for the use of the Commonwealth shall be $500 per year, payable annually in advance. Applications for licenses or renewal of licenses shall be made on forms furnished by the Commissioner of Highways, shall contain such information as the Commissioner of Highways may require, and shall be accompanied by the annual fee. Licenses granted under this section shall expire on December 31 of each year and shall not be prorated. Applications for renewal of licenses shall be made not less than 30 days prior to the date of expiration. Nothing in this section shall be construed to require any person that advertises upon a structure or fixture on its property or a licensed advertiser's structure or other space to obtain a license.

§ 33.2-1206. Revocation of license and judicial review.

A. The Commissioner of Highways may after 30 days' notice in writing to the licensee revoke any license granted by him upon repayment of a proportionate part of the license fee in any case in which he finds that any of the information required to be given in the application for the license is knowingly false or misleading or that the licensee has violated any of the provisions of this article, unless such licensee, before the expiration of such 30 days, corrects such false or misleading information and complies with the provisions of this article.

B. Any person whose license is so revoked is entitled to judicial review of such revocation in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Any person aggrieved by such judgment shall have the right of appeal to the Court of Appeals.

§ 33.2-1207. Bond required from out-of-state licensee.

No license to engage or continue in the business of outdoor advertising shall be granted to any person having its principal place of business outside the Commonwealth or that is incorporated outside the Commonwealth for the posting or display of any advertisement or the erection, use, or maintenance of any advertising structure until such person has furnished and filed with the Commissioner of Highways a bond payable to the Commonwealth, with surety approved by the Commissioner of Highways and in a form approved by the Attorney General, in the sum of $1,000, conditioned that such licensee fulfills all requirements of law and the regulations and orders of the Commissioner of Highways relating to the display of advertisements or the erection of advertising structures. Such bond remains in full force and effect so long as any obligations of such licensee to the Commonwealth remain unsatisfied.

§ 33.2-1208. Permits required.

Except as otherwise provided in this article, no person, whether engaged in the business of outdoor advertising or not, shall erect, use, maintain, post, or display any advertisement or advertising structure outside municipalities in the Commonwealth without first obtaining a permit therefor from the Commissioner of Highways and paying the annual fee therefor, as provided in this article. A permit is required for an off-premises sign, advertisement, or advertising structure authorized by § 33.2-1217 if it is located within a municipality and is visible from the main traveled way of any Interstate System, federal-aid primary, or National Highway System highway.

No bond or permit is required for the posting or display of any advertisement posted or displayed on any advertising structure or space for which a permit has been issued or renewed for the then-current calendar year under the provisions of this article unless such permit has been revoked.

§ 33.2-1209. Applications for permits; fees.

A. A separate application for a permit shall be made for each separate advertisement or advertising structure, on a form furnished by the Commissioner of Highways, which application shall be signed by the applicant or his representative duly authorized in writing to act for him and shall describe and set forth the size, shape, and nature of the advertisement or advertising structure it is proposed to post, display, erect, or

maintain and its actual or proposed location with sufficient accuracy to enable the Commissioner of Highways to identify such advertisement or advertising structure and to find its actual or proposed location.

B. Each application shall be accompanied by an application fee in an amount determined on the basis of the area of the advertisement or advertising structure for which the permit is sought, according to the following schedule:

1. $15 if such area does not exceed 74 square feet;

2. $30 if such area exceeds 74 square feet but does not exceed 1,824 square feet; and

3. $165 if such area exceeds 1,824 square feet.

In the computation of fees under this subsection, each side of the advertisement or advertising structure used or constructed to be used shall be separately considered. If the applicant elects to use an electronic application, the fee shall be reduced by $5 per application.

The fee shall be retained by the Commissioner of Highways if the permit is issued. If the permit is refused, the Commissioner of Highways shall refund one-half of the application fee to the applicant.

C. In addition to the fees required by subsection B, on any original application for an advertisement or advertising structure there shall be imposed an inspection charge of $50 for any advertisement or advertising structure to be located on an Interstate System, federal-aid primary, or National Highway System highway and $25 for any advertisement or advertising structure to be located on any other highway.

D. Each application shall be accompanied by the written consent, or in lieu thereof a copy certified by an officer authorized to take acknowledgments to deeds in the Commonwealth, of the owner of the real property upon which such advertisement or advertising structure is to be erected, used, maintained, posted, or displayed, or of such other person having the legal right to grant such consent, or of the duly authorized agent of such owner or other person, except that in the marsh or meadowland owned by the Commonwealth along either side of the causeway leading from the mainland to the Town of Chincoteague, the legal right to grant such consent shall be vested in the local governing body of such town.

E. Application shall be made in like manner for a permit to use, maintain, or display an existing advertisement or advertising structure.

§ 33.2-1210. Duration and renewal of permit.

Except as provided in § 33.2-1212, permits issued in accordance with this article shall run for the calendar year and may be renewed upon application made upon forms furnished by the Commissioner of Highways and the payment of the same fee required to be paid upon application for a permit. Fees for renewal of permits using the Department's electronic application renewal process shall be reduced by $5 per permit being renewed. Permits shall not be extended or renewed in cases where the permittee has not exercised the privilege of erecting such advertising structure or displayed such advertisement during the period for which the permit was issued. Annual permits issued after December 15 shall cover the following calendar year.

§ 33.2-1211. Revocation of permit.

The Commissioner of Highways may, after 30 days' notice in writing to the permittee, revoke any permit issued by him under § 33.2-1208 upon repayment of a proportionate part of the fee in any case in which it appears to the Commissioner of Highways that the application for the permit contains knowingly false or misleading information, that the permittee has failed to keep in a good general condition and in a reasonable state of repair the advertisement or advertising structure for which such permit was issued, or that the permittee has violated any of the provisions of this article, unless such permittee, before the expiration of such 30 days, corrects such false or misleading information or makes the necessary repairs or improvement in the general condition of such advertisement or advertising structure or complies with the provisions of this article. If the erection, maintenance, and display of any advertisement or advertising structure for which a permit is issued by the Commissioner of Highways and the permit fee has been paid as above provided is prevented by any zoning board, commission, or other public agency that also has jurisdiction over the proposed advertisement or advertising structure or its site, the application fee for such advertisement or advertising structure shall be returned by the Commissioner of Highways and the permit revoked. However, one-half of the application fee shall be deemed to have accrued upon the erection of an advertising structure or the display of an advertisement followed by an inspection by the Commissioner of Highways or his representative.

§ 33.2-1212. Temporary permit.

In any case in which an applicant for a permit certifies in his application that he is unable to state the actual or proposed location of the advertisement or advertising structure or to file the written consent of the landowner or other person having the legal right to the real estate upon which the advertisement or advertising structure is to be erected, used, maintained, posted, or displayed, the Commissioner of Highways shall issue to such applicant a temporary permit, which shall expire 60 days from the date of issue, together with the proper identification number to be attached to such advertisement or advertising structure. Applications for temporary permits must indicate the county and route on which the advertisement or advertising structure is to be located and must be accompanied by a fee of $2 to cover the cost of issuance of the temporary permit. If within such 60 days the applicant files with the Commissioner of Highways an application setting forth all of the information required in § 33.2-1209, together with the required fees, the Commissioner of Highways shall issue to such applicant a permit. In the event that the permit is not issued, the fees submitted shall be returned, except the $2 for the temporary permit.

§ 33.2-1213. Appeal from refusal or revocation of permit.

Any person aggrieved by any action of the Commissioner of Highways in refusing to grant or in revoking a permit under § 33.2-1209 or 33.2-1211 may appeal from the decision of the Commissioner of Highways in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

§ 33.2-1214. Transfer of licenses and permits to successor concerns.

Any license or permit issued pursuant to this article may be transferred to any person that acquires as a successor the business of the person for whom such license or permit was issued.

§ 33.2-1215. Identification of advertising structure or advertisement.

The Commissioner of Highways shall require that each advertising structure and each advertisement not posted or displayed on an advertising structure bear an identification number furnished by the Commissioner of Highways and, if erected, maintained, or displayed by a licensed outdoor advertiser, also bear its name. The Commissioner of Highways shall make suitable provisions for the details thereof.

§ 33.2-1216. Certain advertisements or structures prohibited.

No advertisement or advertising structure shall be erected, maintained, or operated:

1. Within 660 feet of the nearest edge of the right-of-way of the Blue Ridge Parkway, the Colonial National Parkway, the Mount Vernon Boulevard, or any other parkway within the Commonwealth or within 660 feet of any public cemetery, public park reservation, public playground, national forest, or state forest, outside the limits of any municipality; however, any advertisement or advertising structure that is lawfully in place on April 6, 1966, and that does not conform to the 660-foot distance requirement may be maintained for the life of the advertisement or advertising structure;

2. That involves motion or rotation of any part of the structure, moving reflective disks, or running animation or that displays an intermittent light or lights visible from any highway. The prohibition of this subdivision shall not apply to (i) an advertisement or advertisement structure with messages that change no more than once every four seconds and that is consistent with agreements entered into between the Commissioner of Highways and the U.S. Department of Transportation or (ii) an on-premises advertisement or advertising structure with messages displayed as scrolling words or numbers;

3. That uses the words "stop" or "danger" prominently displayed or presents or implies the need or requirement of stopping or the existence of danger on any highway or that is a copy or imitation of official highway signs;

4. That, within visible distance of any highway, advertises any county, city, town, historic place, museum, or shrine without the consent in writing of such county, city, or town or of the owner of such historic place or shrine;

5. That is mobile and is designed to and effectively does distract the attention of passing motorists on any highway by flashing lights, loud and blatant noises, or movable objects;

6. That involves red, green, or amber lights or reflectorized material and resembles traffic signal lights or traffic control signs and is within visible distance of any highway;

7. Within 15 feet of the nearest edge of the pavement of any highway; however, the Commissioner of Highways may waive this restriction whenever the advertisement or advertising structure is actually anchored

outside of the right-of-way and, within his discretion, does not constitute a safety hazard or conflict with any other restriction contained in this section;

8. At any public road intersection in such a manner as would obstruct the clear vision in either direction between a point on the center line of the side road 20 feet from the nearest edge of the pavement of the main road and points on the main road 400 feet distant, measured along the nearest edge of the pavement of the main road;

9. At any grade intersection of a public road and a railroad in such a manner as would obstruct the clear vision in either direction within triangular areas formed by (i) a point at the center of the railroad-public road intersection, (ii) a point on the public road 400 feet from the center of the railroad-public road intersection as measured along the center of the public road, and (iii) a point on the railroad 500 feet from the center of the railroad-public road intersection as measured along the center of the railroad;

10. At or near any curve in a road in such a manner as to obstruct the clear vision of traffic from any one point on such curve to any other point not more than 400 feet apart, as measured between each point from the nearest edge of the pavement;

11. That advertises activities that are illegal under state or federal laws or regulations in effect at the location of such sign or advertisement or at the location of such activities;

12. That is obsolete or inconsistent with this article or regulations adopted by the Board pursuant to this article; or

13. After December 18, 1991, adjacent to any Interstate System, federal-aid primary, or National Highway System highway in the Commonwealth that has been designated as a Virginia byway or scenic highway, except directional and official signs and notices defined in this article and regulations adopted pursuant to this article, on-premises signs, and signs advertising the sale or lease of property upon which they are located.

§ 33.2-1217. Special provisions pertaining to Interstate System, National Highway System, and federal-aid primary highways.

A. Notwithstanding the territorial limitation set out in § 33.2-1202, no sign or advertisement adjacent to any Interstate System, National Highway System, or federal-aid primary highway shall be erected, maintained, or displayed that is visible from the main traveled way within 660 feet of the nearest edge of the right-of-way, except as provided in subsections B and D, and outside of an urban area, no sign or advertisement beyond 660 feet of the nearest edge of the right-of-way of any Interstate System, National Highway System, or federal-aid primary highway that is visible from the main traveled way shall be erected, maintained, or displayed with the purpose of its message being read from the main traveled way, except as set forth in subsection C.

B. The following signs, advertisements, or advertising structures may be erected, maintained, and displayed within 660 feet of the right-of-way of any Interstate System, National Highway System, or federal-aid primary highway:

Class 1: Official signs. Directional and official signs and notices, including signs and notices pertaining to the availability of food, lodging, vehicle service and tourist information, natural wonders, scenic areas, museums, and historic attractions, as authorized or required by law; however, where such signs or notices pertain to facilities or attractions that are barrier free, such signs or notices shall contain the International Symbol of Access. The Board shall determine the type, lighting, size, location, number, and other requirements of signs of this class.

Class 2: On-premises signs. Signs not prohibited by other parts of this article that are consistent with the applicable provisions of this section and that advertise the sale or lease of, or activities being conducted upon, the real property where the signs are located, provided that any such signs that are located adjacent to and within 660 feet of any Interstate System highway and do not lie in commercial or industrial zones within the boundaries of incorporated municipalities, as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to the Interstate System is subject to municipal regulation or control, or in areas where land use as of September 21, 1959, was clearly established by state law as industrial or commercial, shall comply with the following requirements:

1. Not more than one sign advertising the sale or lease of the same property may be erected or maintained in such manner as to be visible to traffic proceeding in any one direction on any one Interstate System highway;

2. Not more than one sign visible to traffic proceeding in any one direction on any one Interstate System highway and advertising activities being conducted upon the real property where the sign is located may be erected or maintained more than 50 feet from the advertised activity, and no such sign may be located more than 250 feet from the center of the advertised activity; and

3. No sign, except one that is not more than 50 feet from the advertised activity, that displays any trade name that refers to or identifies any service rendered or product sold may be erected or maintained unless the name of the advertised activity is displayed as conspicuously as such trade name.

Class 3: Other signs. Any signs or advertisements that are located within areas adjacent to any Interstate System, National Highway System, or federal-aid primary highway that are zoned industrial or commercial under authority of state law or in unzoned commercial or industrial areas as determined by the Board from actual land uses. The Board shall determine the size, lighting, and spacing of signs of this class, provided that such determination shall be no more restrictive than valid federal requirements on the same subject.

C. The following signs, advertisements, or advertising structures may be erected, maintained, and displayed beyond 660 feet of the right-of-way of any Interstate System, National Highway System, or federal-aid primary highway outside urban areas:

1. Class 1 and Class 2 signs, advertisements, or advertising structures set forth in subsection B.

2. All other signs, advertisements, or advertising structures erected, maintained, or displayed more than 660 feet from the nearest edge of the right-of-way of an Interstate System, National Highway System, or federal-aid primary highway, unless such sign or advertisement is visible from the main traveled way of such highways and erected, maintained, or displayed with the purpose of its message being read from the main traveled way of such highways.

In determining whether a sign, advertisement, or advertising structure is "erected, maintained, or displayed with the purpose of its message being read," the Commissioner of Highways shall consider, at a minimum, the nature of the business or product advertised thereon, the availability of such business or product to users of the controlled highway, and the visibility of the sign, advertisement, or advertising structure from the main traveled way of the controlled highway. Such visibility may be measured by considering the size or height of the sign, advertisement, or advertising structure; the configuration, size, and height of recognizable emblems, images, and lettering thereon; the angle of the sign, advertisement, or advertising structure to the main traveled way of the controlled highway; the degree to which physical obstructions hinder the view of the sign, advertisement, or advertising structure from the main traveled way of the controlled highway; and the time during which such sign, advertisement, or advertising structure is exposed to view by travelers on the main traveled way of the controlled highway traveling at the maximum and minimum speeds posted.

D. In order to provide information in the specific interest of the traveling public, the Department is authorized to maintain maps, permit informational directories and advertising pamphlets to be made available at rest areas, and establish information centers at rest areas for the purpose of informing the public of places of interest within the Commonwealth and providing such other information as may be considered desirable.

E. Notwithstanding any other provision of law, lawfully erected and maintained nonconforming signs, advertisements, and advertising structures shall not be removed or eliminated by amortization under state law or local ordinances without compensation as described in subsection F.

F. The Commissioner of Highways is authorized to acquire by purchase, gift, or the power of eminent domain and to pay just compensation upon the removal of nonconforming signs, advertisements, or advertising structures lawfully erected and maintained under state law or state regulations, provided that subsequent to November 6, 1978, whenever any local ordinance that is more restrictive than state law requires the removal of such signs, advertisements, or advertising structures, the local governing body shall initiate the removal of such signs, advertisements, or advertising structures with the Commissioner of Highways, who shall have complete authority to administer the removal of such signs, advertisements, or advertising structures. Upon proof of payment presented to the local governing bodies, the local governing bodies shall reimburse the Commissioner of Highways the funds expended that are associated with the removal of such signs, advertisements, or advertising structures required by local ordinances, less any federal funds received for such purposes. Notwithstanding the provisions of this subsection, nothing shall prohibit the local governing bodies from removing signs, advertisements, or advertising structures that are made nonconforming

solely by local ordinances so long as those ordinances require the local governing bodies to pay 100 percent of the cost of removing them and just compensation upon their removal.

Such compensation is authorized to be paid only for the taking from the owner of such sign or advertisement of all right, title, leasehold, and interest in such sign or advertisement and the taking from the owner of the real property on which the sign or advertisement is located of the right to erect and maintain such sign or advertisement thereon.

The Commissioner of Highways shall not be required to expend any funds under this section unless and until federal-aid matching funds are made available for this purpose.

§ 33.2-1218. Removal of billboard signs under this chapter prohibited without just compensation.

Notwithstanding any other provision of law, no billboard sign subject to this chapter may be removed by action of a county, city, or town under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 without the payment of just compensation by the county, city, or town unless the billboard sign cannot remain on the property due to the site constraints of the property and removal of the billboard sign is therefore necessary for development on the property. The property owner may terminate the leasehold or other right of the billboard sign to remain on the property in accordance with the terms and conditions of the contract between the property owner and the billboard sign owner, but may not be required to do so by the county, city, or town as a condition of obtaining development approval for the property unless removal of the billboard sign is necessary for development of the property or the billboard sign is nonconforming and is the principal use on the property and the zoning ordinance permits only one principal use on the property.

§ 33.2-1219. Maintenance and repair of nonconforming billboard signs.

Notwithstanding any other provision of law, maintenance of and repairs to nonconforming billboard signs shall be governed by this section and any applicable regulations promulgated by the Commissioner of Highways, known as the "Control and Continuance of Nonconforming Signs, Advertisements, and Advertising Structures." Nonconforming billboard signs shall be maintained in a good state of repair and shall be subject to removal for failure to do so, in accordance with §§ 33.2-1211 and 33.2-1229. In order to make repairs to a nonconforming billboard sign, the owner shall make a written request to the Commissioner of Highways and submit the documentation required by 24VAC30-120-170. The Commissioner of Highways shall review the written request, and if the Commissioner of Highways determines that the cost of requested repairs does not exceed a dollar amount greater than 50 percent of the current replacement cost of the entire billboard sign or structure, the Commissioner of Highways shall provide the owner of the billboard sign with a letter approving the billboard sign repairs. However, in no case shall a nonconforming billboard sign be replaced or rebuilt if the cost of the replacement or rebuilding exceeds 50 percent of the current replacement cost. The owner of the billboard sign shall apply for a building permit from the locality in which the billboard sign is located and provide a copy of the approval letter from the Commissioner of Highways as part of the application for the building permit. The Commissioner's determination as to whether the owner of the billboard sign has complied with this section shall be binding upon the locality unless the building official, for good cause shown, submits to the Commissioner of Highways documentation objecting to the Commissioner's determination within 30 days of the building permit application, with a copy of such documentation being provided to the billboard sign owner. The Commissioner of Highways shall consider any documentation submitted by the building official and shall reissue a determination in accordance with this section, which determination shall be binding upon the locality.

§ 33.2-1220. Regulations and agreements with United States implementing § 33.2-1217.

The Board may issue regulations and is authorized to enter into agreements with the United States as provided in 23 U.S.C. § 131 with respect to the regulation and control of signs, advertisements, and advertising structures in conformity with § 33.2-1217, provided that such agreements shall not prevent the General Assembly of Virginia from amending or repealing § 33.2-1217 at any time, and provided further that in the event the federal law is amended to lessen the special restrictions applicable to signs, advertisements, and advertising structures adjacent to Interstate System or federal-aid primary highways, the Board is authorized to adopt regulations to conform to such change in federal law and to amend any agreement with the United States relating to such control.

§ 33.2-1221. Selective pruning permits; fees; penalty.

A. As used in this section, "local beautification project" means any project in a locality that includes installation of plant materials, using public or other funds, in any public right-of-way within a county, city, or town.

B. Notwithstanding the provisions of § 33.2-1202 or any other provision of law:

1. The Commissioner of Highways shall by permit authorize the selective pruning, within highway rights-of-way, as highways are defined in § 33.2-1200, including within corporate limits of municipalities, of vegetation that obstructs motorists' view of signs displayed on outdoor advertising structures legally erected and properly maintained along the highways. Permits authorizing such pruning shall be issued in accordance with this section.

a. All work performed under the permit shall be (i) subject to the direction of the Commissioner of Highways, (ii) supervised on-site by a certified arborist approved by the Commissioner of Highways, (iii) completed to the satisfaction of the Commissioner of Highways, and (iv) performed solely at the expense of the permittee.

b. All pruning shall be performed in a manner that (i) creates a picture frame effect around the sign and (ii) beautifies the area surrounding the advertising structure. All cutting shall be limited to vegetation with trunk base diameters of less than six inches. Pruning cuts of limbs or branches or other vegetation with diameters greater than four inches and clear cutting shall not be authorized and shall be strictly prohibited. Pruning of vegetation in a highway median shall not be permitted where the locality within which the pruning is to be done has a local beautification project in the area within the scope of the selective pruning application; however, relocation or replanting of such vegetation shall be permitted in accordance with a landscaping plan as provided in this section.

c. Any diseased or unsightly vegetation or any vegetation that endangers the health or retards the growth of desirable vegetation may be removed at the discretion of the certified arborist supervising the work. Any such removed vegetation shall be replaced at the permittee's expense with desirable vegetation.

2. The requirements of this section shall not apply to the owner or authorized agent of the owner of any sign, advertisement, or advertising structure exempted from the provisions of this article by § 33.2-1204.

3. The Commissioner of Highways shall promulgate such regulations as he deems necessary or desirable to carry out the provisions of this section. Such regulations shall include the following requirements:

a. Every application for a permit submitted under this section shall be accompanied by photographs of the affected site and a detailed description of work proposed to be performed.

b. A fee of $400 shall accompany every application made to the Commissioner of Highways or, if applicable, to the locality within which the pruning is to be performed. All such fees collected by the Commissioner of Highways shall be paid by the Commissioner of Highways into the state treasury and allocated to the Board.

c. Every applicant shall post a bond payable to the Commonwealth, with surety approved by the Commissioner of Highways and in a form approved by the Attorney General, in the sum of $2,500, conditioned on the permittee's fulfillment of all requirements of the permit.

d. No permit shall be issued under this section in order to create a new site for an outdoor advertising structure.

4. Where the applicant is seeking a vegetation control permit in a locality where the public right-of-way is within the jurisdictional limits of a city or town on a highway or street not within the jurisdiction of the Commissioner of Highways under § 33.2-1202 or on a highway or street in a county having the county manager form of government, the Commissioner of Highways shall delegate the administration of this section to that locality, and if so delegated, the locality shall apply the provisions of this section.

5. If there are plant materials in the public right-of-way that are part of a local beautification project, the Commissioner of Highways or the locality, as the case may be, may include a requirement in accordance with the provisions of subdivisions 4 through 7 that as a condition of the issuance of a vegetation control permit for selective pruning, the applicant must submit a landscaping plan showing how the applicant will relocate or replant the vegetation obstructing the motorists' view from the main traveled way of the highway or street of signs displayed on outdoor advertising structures, in lieu of the selective pruning of such plant materials. In

the absence of the existence of a local beautification project in the area within the scope of the selective pruning application, no landscaping plan requirement shall be imposed on the applicant.

6. If subdivision 5 is applicable, the applicant shall pay the reasonable costs of implementing the landscaping plan, which may include relocating existing plant materials, purchasing new replacement plant materials, and planting vegetation that will not grow to a height or position in the future so as to obstruct motorists' view from the main traveled way of the highway or street of signs displayed on outdoor advertising structures, as otherwise set out in the landscaping plan.

7. The provisions of subdivisions 4 through 6 shall apply to any local beautification project installed prior to July 1, 2006. On and after July 1, 2006, the locality shall not plant materials that obstruct motorists' view from the main traveled way of the highway or street of signs displayed on outdoor advertising structures. If the local beautification project violates this section, in addition to other applicable penalties, the locality shall bear the costs to bring such beautification project into compliance with this section.

8. The locality shall provide a 30-day written notice to the Commissioner of Highways prior to installation of a local beautification project within the right-of-way of a Department maintained highway that may obstruct the motorists' view of signs displayed on outdoor advertising structures. Such notice shall include a description of the plant materials to be used in, and a copy of the plans for, such beautification project.

9. Any application for vegetation control in compliance with this section submitted to the Commissioner of Highways shall be acted upon within 60 days of submission or shall be deemed approved. Any application for vegetation control in compliance with this section submitted to any city or town or on a highway or street in a county with the county manager form of government shall be acted upon within 60 days of submission or shall be deemed approved. The locality may impose conditions in approval of the landscaping plan consistent with this section and the regulations promulgated thereto. If the locality is not satisfied that the landscaping plan submitted by the applicant complies with this section, the locality may appeal to the Commissioner of Highways prior to the expiration of the 60-day period from the date of submission. If the applicant objects to the conditions imposed by the locality as part of the approval of the landscaping plan, the applicant may appeal to the Commissioner of Highways within 30 days after the final action on the landscaping plan. The appealing party shall submit a written appeal to the Commissioner of Highways, stating the reasons for such appeal, along with a fee of $400. The Commissioner of Highways shall review the landscaping plan and the reasons for the appeal and shall issue a determination in accordance with this section within 30 days after filing of the appeal, which determination shall be binding upon the applicant and the locality.

10. Upon issuance of a vegetation control permit in accordance with this section, the applicant shall give written notice, at least seven days in advance of any site work, as authorized by the permit, of the date and time of the commencement of the site work as approved by the permit. Such written notice shall be given to the Commissioner of Highways unless the public right-of-way is within the jurisdictional limits of a city or town on a highway or street not within the jurisdiction of the Commissioner under § 33.2-1202, in which case the written notice shall be given to the local government official who approved the permit.

11. Any person, firm, or corporation found by a court of competent jurisdiction to have violated any provision of this section, any regulation adopted pursuant to this section, or any permit issued under this section shall be subject to the penalties provided in § 33.2-1229.

§ 33.2-1222. Tree-trimming policies.

The Board shall adopt policies governing the pruning and trimming of trees during nonemergency conditions by the employees, agents, and contractors of the Department of Transportation in order to preserve roadside trees that do not adversely affect highway operations, maintenance, or safety. Such policies shall be developed in consultation with an advisory group whose members shall include representatives of the Department of Transportation, the Department of Forestry, Scenic Virginia, and the American Society of Consulting Arborists and shall be consistent with generally accepted standards recommended by nationally recognized organizations, including the American National Standards Institute.

§ 33.2-1223. Pasting advertisements prohibited in certain instances.

No advertisement shall be pasted or glued on any building, fence, wall, tree, rock, or other similar structure or object unless the same structure or object is an advertising structure for which a permit has been issued and is in effect.

§ 33.2-1224. Signs or advertising on rocks, poles, etc., within limits of highway; civil penalty.

Any person who in any manner (i) paints, prints, places, puts, or affixes any sign or advertisement upon or to any rock, stone, tree, fence, stump, pole, mile-board, milestone, danger-sign, guide-sign, guidepost, highway sign, historical marker, building, or other object lawfully within the limits of any highway or (ii) erects, paints, prints, places, puts, or affixes any sign or advertisement within the limits of any highway is subject to a civil penalty of $100. Each occurrence shall be subject to a separate penalty. All civil penalties collected under this section shall be paid into the Highway Maintenance and Operating Fund. Signs or advertisements placed within the limits of the highway are hereby declared a public and private nuisance and may be forthwith removed, obliterated, or abated by the Commissioner of Highways or his representatives without notice. The Commissioner of Highways may collect the cost of such removal, obliteration, or abatement from the person erecting, painting, printing, placing, putting, affixing, or using such sign or advertisement. When no one is observed erecting, painting, printing, placing, putting, or affixing such sign or advertisement, the person, firm, or corporation being advertised shall be presumed to have placed the sign or advertisement and shall be punished accordingly. Such presumption, however, shall be rebuttable by competent evidence. In addition, the Commissioner of Highways or his representative may seek to enjoin any recurring violator of this section. The Commissioner of Highways may enter into agreements with any local governing body authorizing local law-enforcement agencies or other local governmental entities to act as agents of the Commissioner of Highways for the purpose of (i) enforcing the provisions of this section and (ii) collecting the penalties and costs provided for in this section. Any such agreement may provide that penalties and costs collected pursuant to such agreement shall be paid as agreed.

The provisions of this section shall not apply to signs or outdoor advertising regulated under other provisions of this chapter.

§ 33.2-1225. Commissioner of Highways may enter into certain agreements; civil penalties.

A. The Commissioner of Highways may enter into agreements with the local governing body of Fairfax County authorizing local law-enforcement agencies or other local governmental entities to act as agents of the Commissioner of Highways for the purpose of (i) enforcing the provisions of § 33.2-1224 and (ii) collecting the civil penalties and costs provided for in that section. However, the local governing body of Fairfax County shall not enter into any such agreement until it has held a public hearing thereon.

B. Notwithstanding the provisions of § 33.2-1224, the penalties and costs collected under this section shall be paid to Fairfax County.

C. Notwithstanding subsections A and B, signs and advertising promoting or providing directions to a special event erected from Saturday through the following Monday shall not be subject to an agreement provided for in subsection A.

D. If Fairfax County acts as an agent of the Commissioner of Highways under this section, then it shall require each of its employees and any volunteers who are authorized to act on behalf of the County to comply with the provisions of this section and any other applicable law. If a lawfully placed sign is confiscated by an employee or volunteer authorized to act for the County in violation of the authority granted under this section, the sign owner shall have the right to reclaim the sign within five business days of the date of such confiscation.

§ 33.2-1226. Harmony of regulations.

No zoning board or commission or any other public officer or agency shall permit any sign, advertisement, or advertising structure that is prohibited under the provisions of this article, nor shall the Commissioner of Highways permit any sign, advertisement, or advertising structure that is prohibited by any other public board, officer, or agency in the lawful exercise of its powers.

§ 33.2-1227. Violation a nuisance; abatement.

Any sign, advertisement, or advertising structure that is erected, used, maintained, operated, posted, or displayed for which no permit has been obtained where such is required, or after revocation or more than 30 days after expiration of a permit, is hereby declared to be a public and private nuisance and may be forthwith removed, obliterated, or abated by the Commissioner of Highways. The Commissioner of Highways may collect the cost of such removal, obliteration, or abatement from the person erecting, using, maintaining, operating, posting, or displaying such sign, advertisement, or advertising structure.

§ 33.2-1228. Disposition of fees.

All moneys received by the Commissioner of Highways under the provisions of this article shall be paid by him into the state treasury, except as provided in §§ 33.2-1224 and 33.2-1229, and allocated to the Board for use in the regulation and control of outdoor advertising and landscaping of highways.

§ 33.2-1229. Penalties for violation.

A. Notwithstanding any other provision of law, any person, firm, or corporation that violates any provision of this article or applicable regulations that fails to take corrective action within 30 days as specified in a written notice from the Commissioner of Highways shall be subject to any or all of the following penalties:

1. A civil penalty of not more than $250 per violation. Each day during which the violation continues after a final determination by the Commissioner of Highways of such violation shall be deemed a separate violation;

2. Revocation by the Commissioner of Highways of any permit for the sign; or

3. Removal of the sign by the Commissioner of Highways. The Commissioner of Highways may collect the costs of the removal from the owner of the sign.

B. Any person aggrieved by the action of the Commissioner of Highways in enforcing the provisions of subsection A may appeal the decision of the Commissioner of Highways in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

C. The Commissioner of Highways may remove signs without giving a corrective action notice as provided in subsection A (i) for any violation of subdivision 3, 6, 7, 8, 9, or 10 of § 33.2-1216 or of § 33.2-1223 or (ii) if the Commissioner of Highways determines that the sign poses a risk to highway safety.

D. The Commissioner of Highways may recover all civil penalties authorized in subsection A in any manner permitted by law, including (i) the placement of a tax lien on the owner's real property upon which the sign is located and (ii) the use of the Setoff Debt Collection Act (§ 58.1-520 et seq.).

E. All civil penalties collected under this section shall be paid into the Highway Maintenance and Operating Fund.

§ 33.2-1230. Construction of article.

This article shall be liberally construed with a view to the effective accomplishment of its purposes.

Article 2.

False and Misleading Signs.

§ 33.2-1231. Prohibition of false and misleading signs.

It shall be unlawful for any person to erect or maintain alongside, or in plain view of, any public highway any false or misleading sign of any kind or character purporting to furnish travel information relating to place or direction. It shall be unlawful for any person to erect or maintain alongside, or in plain view of, any public highway any sign of any kind or character purporting to furnish travel information relating to merchandise or services unless the design of such sign, the information thereon, and the location thereof are approved in writing by the Commissioner of Highways, provided that the provisions of this section as to merchandise and service shall not:

1. Apply to or restrict the right of any person to post, display, erect, or maintain on any store, dwelling house, or other building, together with so much land therewith as shall be necessary for the convenience, use, and enjoyment thereof, or on any mercantile appliances, contrivances, or machinery annexed or immediately adjacent thereto, any sign advertising goods, merchandise, real or personal property, business services, entertainment, or amusements actually and in good faith manufactured, produced, bought, sold, conducted, furnished, or dealt in on the premises;

2. Limit or restrict the publication of official notices by or under the direction of any public or court officer in the performance of his official or directed duties;

3. Limit or restrict notice of sale by a trustee under a deed of trust, deed of assignment, or other similar instrument; or

4. Apply to or restrict the right of any property owner or his agent, lessee, or tenant to maintain any sign offering to the public farm products, including livestock of every kind, or board or lodging or similar entertainment, or the sale, rental, or lease of the property.

Nothing in this section shall limit the right of any person, firm, or corporation to erect signs that advertise natural scenic attractions in the Commonwealth.

§ 33.2-1232. Penalty for violation of § 33.2-1231.

Any person who violates any of the provisions of § 33.2-1231 shall be subject to a fine not to exceed $10 for each offense, and it shall be deemed a separate offense for the same person to erect, or permit to be erected, a similar sign at each of two or more places.

§ 33.2-1233. Removal of false or misleading signs by Commissioner of Highways.

Whenever the Commissioner of Highways determines that a sign gives incorrect information in violation of this article, he shall notify the person who erected such sign and the person on whose property it is located, in writing, to remove it immediately, and if it is not removed within 10 days after receipt of such notice, the Commissioner of Highways shall remove and destroy such sign, or cause it to be removed and destroyed, without liability for damages therefor, and if any person convicted of erecting or maintaining any such sign, or of permitting the same to be erected or maintained, as provided in this article shall fail or refuse to remove such sign within 10 days after such judgment of conviction, the Commissioner of Highways shall remove and destroy such sign without liability for damages.

CHAPTER 13.

WOODROW WILSON BRIDGE AND TUNNEL COMPACT.

§ 33.2-1300. Preamble; Woodrow Wilson Bridge and Tunnel Compact.

Whereas, traffic congestion imposes serious economic burdens on the metropolitan Washington, D.C., area, costing each commuter an estimated $1,000 per year; and

Whereas, the volume of traffic in the metropolitan Washington, D.C., area is expected to increase by more than 70 percent between 1990 and 2020; and

Whereas, the deterioration of the Woodrow Wilson Memorial Bridge and the growing population of the metropolitan Washington, D.C., area contribute significantly to traffic congestion; and

Whereas, the Bridge serves as a vital link in the Interstate Highway System and in the Northeast corridor; and

Whereas, identifying alternative methods for maintaining this vital link of the Interstate System is critical to addressing the traffic congestion of the area; and

Whereas, the Bridge is the only drawbridge in the metropolitan Washington, D.C., area on the Interstate System; and

Whereas, the Bridge is the only segment of the Capital Beltway with only six lanes; and

Whereas, the Bridge is the only segment of the Capital Beltway with a remaining expected life of less than 10 years; and

Whereas, the Bridge is the only part of the Interstate Highway System owned by the federal government; and

Whereas, the Bridge was constructed by the federal government; and

Whereas, prior to the date of the enactment of this Act, the federal government will have contributed 100 percent of the cost of building and rehabilitating the Bridge; and

Whereas, the federal government has a continuing responsibility to fund future costs associated with the upgrading of the Interstate Route 95 crossing, including the rehabilitation and construction of the Bridge; and

Whereas, the Woodrow Wilson Memorial Bridge Coordination Committee is undertaking planning studies pertaining to the Bridge, consistent with the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.) and other applicable federal laws; and

Whereas, the transfer of ownership of the Bridge to a regional authority under the terms and conditions described in this Act would foster regional transportation planning efforts to identify solutions to the growing problem of traffic congestion on and around the Bridge; and

Whereas, the Authority shall maximize the use of existing public or private sector entities to provide necessary project services, including management, construction, legal, accounting, and operating services and not create a new bureaucracy or organizational structure; and

Whereas, any material change to the Bridge must take into account the interests of nearby communities, the commuting public, federal, state, and local government organizations, and other affected groups; and

Whereas, a commission of congressional, state, and local officials and transportation representatives has recommended to the Secretary of the United States Department of Transportation that the Bridge be transferred to an independent authority to be established by the State of Maryland, the District of Columbia and the Commonwealth of Virginia; now, therefore,

The State of Maryland, the District of Columbia and the Commonwealth of Virginia, hereinafter referred to as the signatories, do hereby covenant and agree as follows:

WOODROW WILSON BRIDGE AND TUNNEL COMPACT.

CHAPTER I.

GENERAL COMPACT PROVISIONS.

Article I.

Authority Created.

There is hereby created the Woodrow Wilson Bridge and Tunnel Authority, hereinafter referred to as the "Authority."

Article II.

Powers and Duties.

The Authority shall be an instrumentality and common agency of the Commonwealth of Virginia, the District of Columbia and the State of Maryland, and shall have the powers and duties set forth in this compact and such additional powers and duties as may be conferred upon it by subsequent action of the signatories.

Article III.

Board; Terms of Office; Officers.

1. The Authority shall be governed by a board of nine voting and two nonvoting members appointed as follows:

a. Three members shall be appointed by the Governor of the Commonwealth of Virginia;

b. Three members shall be appointed by the Governor of the State of Maryland;

c. Two members shall be appointed by concurrence of the Mayor of the District of Columbia and the Governors of Maryland and Virginia;

d. One member shall be appointed by the U.S. Secretary of Transportation; and

e. Two additional members, who shall be nonvoting members, shall be appointed by the Mayor of the District of Columbia.

2. Members, other than members who are elected officials, shall have backgrounds in finance, construction lending, and infrastructure policy disciplines. At least one member of the Board from Maryland and one member of the Board from Virginia shall be elected officials each of whom represents a political subdivision that has jurisdiction over the area at an end of the project bridge, bridges or tunnels.

3. No person in the employment of or holding any official relationship to any person or company doing business with the Authority, or having any interest of any nature in any such person or company or affiliate or associate thereof, shall be eligible for appointment as a member or to serve as an employee of the Authority or to have any power or duty or receive any compensation in relation thereto.

4. The Chairperson of the Authority shall be elected from among the voting members on a biennial basis.

5. The members may also elect a secretary and a treasurer, or a secretary-treasurer, who may be members of the Authority, and prescribe their duties and powers.

6. Each member shall serve a six-year term, except that each signatory shall make its initial appointments as follows:

a. One member appointed by the Governor of Maryland and one member appointed by the Governor of Virginia shall each be appointed for a six-year term;

b. One member appointed by the Governor of Maryland and one member appointed by the Governor of Virginia shall each be appointed for a four-year term;

c. One member appointed by the Governor of Maryland and one member appointed by the Governor of Virginia shall each be appointed for a two-year term;

d. One member appointed by concurrence of the Governors of Maryland and Virginia and the Mayor of the District of Columbia shall be appointed for a six-year term;

e. One member appointed by concurrence of the Governors of Maryland and Virginia and the Mayor of the District of Columbia shall be appointed for a four-year term; and

f. The member appointed by the U.S. Secretary of Transportation shall be appointed for a two-year term.

g. The initial terms of the nonvoting members appointed by the Mayor of the District of Columbia shall be as follows:

(1) One member shall be appointed for a six-year term; and

(2) One member shall be appointed for a four-year term.

7. The failure of a signatory or the Secretary of Transportation to appoint one or more members shall not impair the Authority's creation or operations when the signatories and Authority are in compliance with the other terms of this compact.

8. Any person appointed to fill a vacancy shall serve for the unexpired term. A member of the Authority may not serve for more than two full terms.

9. The members of the Authority, including nonvoting members, shall not be personally liable for any act done or action taken in their capacities as members of the Authority, nor shall they be personally liable for any bond, note, or other evidence of indebtedness issued by the Authority.

10. Six members shall constitute a quorum, with the following exceptions:

a. Seven affirmative votes shall be required to approve bond issues and the annual budget of the Authority.

b. A motion may not be approved if all three members appointed solely by one Governor cast negative votes.

11. Any sole source procurement of goods, services, or construction in excess of $250,000 shall require the prior approval of a majority of all of the voting members of the Authority.

12. Members shall serve without compensation and shall reside within the Washington, D.C., metropolitan area. Members shall be entitled to reimbursement for their expenses incurred in attending the meetings of the Authority and while otherwise engaged in the discharge of their duties as members of the Authority.

13. The Authority may employ such engineering, technical, legal, clerical, and other personnel on a regular, part-time, or consulting basis as in its judgment may be necessary for the discharge of its duties. The Authority shall not be bound by any statute or regulation of any signatory in the employment or discharge of any officer or employee of the Authority, except that Article 3 (§ 40.1-58 et seq.) of Chapter 4 of Title 40.1 of the Code of Virginia shall be applicable to employees whose situs of employment is in the Commonwealth of Virginia.

14. a. The Authority shall establish its office for the conduct of its affairs at a location to be determined by the Authority and shall publish rules and regulations governing the conduct of its operations.

b. (1) The Authority may adopt rules and regulations which shall include, but shall not be limited to, an ethics code, public access to information, administrative procedures, and open meetings and shall be consistent with similar practices currently adopted in Maryland, Virginia, or the District of Columbia.

(2) The Authority may adopt regulations after publication of notice of intention to adopt such regulations published in a newspaper of general circulation in the metropolitan Washington, D.C., area and after an opportunity for public comment.

(3) The Authority shall also publish a notice to adopt such regulations in the Maryland Register and in the Virginia Register.

Article IV.

Signatories; Taxing Powers.

Nothing herein shall be construed to amend, alter, or in any way affect the power of the signatories and their political subdivisions to levy and collect taxes on property or income or upon the sale of any material, equipment, or supplies or to levy, assess, and collect franchise or other similar taxes or fees for the licensing of vehicles and the operation thereof.

Article V.

Adoption of Compact by Signatories; Withdrawal; Cooperation.

1. This compact shall be adopted by the signatories in the manner provided by law. This compact shall become effective after the State of Maryland and the District of Columbia have passed acts similar in substance to this Act.

2. Any signatory may withdraw from the compact upon one year's written notice to that effect to the other signatories. In the event of a withdrawal of one of the signatories from the compact, the compact shall be terminated; provided, however, that no revenue bonds, notes, or other evidence of obligation issued pursuant to Article VII of Chapter II, or any other financial obligations of the Authority remain outstanding and that the withdrawing signatory has made a full accounting of its financial obligations, if any, to the other signatories.

3. Upon the termination of this compact, the jurisdiction over the matters and persons covered by this compact shall revert to the signatories and the federal government, as their interests may appear.

4. Each of the signatories pledges to each of the other signatory parties faithful cooperation in the development and implementation of the project.

Article VI.

Terms of Agreement Between Signatories.

The Authority shall not undertake the ownership of the existing Woodrow Wilson Bridge, or any duties or responsibilities associated therewith, nor undertake any of the responsibilities and powers provided in this Act until the Governors of the State of Maryland and the Commonwealth of Virginia and the Mayor of the District of Columbia have entered into an agreement with the U.S. Secretary of Transportation including provisions governing the transfer of the existing Bridge from the federal government to the Authority, and which shall provide for a contractual commitment by the federal government to provide federal funding for the project, including, at a minimum, a 100 percent federal share for the following:

(1) The cost of continuing rehabilitation of the Bridge until such time as the project is operational;

(2) An amount, as determined by the Woodrow Wilson Memorial Bridge Coordination Committee, equivalent to the cost of replacing the Bridge with a comparable modern bridge designed according to current engineering standards;

(3) The cost of planning, preliminary engineering and design, right-of-way acquisition, environmental studies and documentation, and final engineering for the project; and

(4) A substantial contribution towards remaining project costs.

Such federal funds shall be in addition to and shall not diminish the federal transportation funding allocated or apportioned to the Commonwealth of Virginia and the State of Maryland and the District of Columbia. Upon all parties' approval of this agreement, this compact shall become effective and the Authority shall have responsibility for duties concerning ownership, construction, operation, and maintenance of the project. At least 30 days before the Governor of Virginia enters into the agreement described under this article, the Governor shall submit the agreement to the Commonwealth Transportation Board for its review and comment.

Article VII.

Management Plan.

Within a reasonable period after this compact becomes effective under Article VI of this chapter, the Authority shall prepare and submit to the Governors of the Commonwealth of Virginia and the State of Maryland and the Mayor of the District of Columbia, a management plan that includes:

A. An organizational structure;

B. A staffing plan that includes job descriptions; and

C. A proposed salary schedule consistent with existing salary schedules for similar positions in the State of Maryland, the Commonwealth of Virginia, or the District of Columbia.

The Authority shall not implement the provisions of this Act until the Governors of the Commonwealth of Virginia and the State of Maryland and the Mayor of the District of Columbia have approved the management plan.

Subsequent to the approval of the management plan, the Authority may increase the number of its employees and their salary levels, provided that such increases do not result in a 20 percent increase above the level in the approved management plan. Increases in excess of 20 percent shall require an amendment to the approved management plan. A proposed amendment shall be submitted to and approved by the Governors of the Commonwealth of Virginia and the State of Maryland and the Mayor of the District of Columbia prior to becoming effective.

In the conduct of its responsibilities and duties, the Authority shall maximize the use of existing public and private sector entities to provide necessary services, including management, construction, legal, accounting, and other services, as the Authority may deem necessary.

Article VIII.

Jurisdiction of Courts; Liability for Contracts and Torts.

1. Except as provided herein, the Authority shall be liable for its contracts and for its torts and those of its directors, officers, employees, and agents. For tort actions arising out of conduct occurring in Maryland, Maryland tort and sovereign immunity law shall apply. The exclusive remedy for such breach of contracts and torts for which the Authority shall be liable, as herein provided, shall be by suit against the Authority. Nothing contained in this Act shall be construed as a waiver by Maryland, the District of Columbia, or Virginia of any immunity from suit.

2. The United States district courts shall have original jurisdiction, concurrent with the courts of Virginia, the District of Columbia, and Maryland, of all actions brought by or against the Authority. Any such action initiated in a state court or the superior court of the District of Columbia shall be removable to the appropriate United States district court in the manner provided by act of June 25, 1948, as amended (28 U.S.C. § 1446).

3. If any part or provision of this compact or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this compact or the application thereof to other persons or circumstances, and the signatories hereby declare that they would have entered into this compact or the remainder thereof had the invalidity of such provision or application thereof been apparent.

4. This compact shall be liberally construed to effectuate the purposes for which it is created.

CHAPTER II.

ADDITIONAL POWERS; FINANCING; PROPERTY ACQUISITION; PROCUREMENT.

Article I.

Definitions.

As used in this Act the following words shall have the following meanings:

"Bonds" or "revenue bonds" means bonds and notes or refunding bonds and notes or bond anticipation notes or other obligations of the Authority issued under the provisions of this Act.

"Cost," as applied to the project, means the cost of acquisition of all lands, structures, rights-of-way, franchises, easements and other property rights and interests; the cost of lease payments; the cost of construction; the cost of demolition of the current structure; the cost of demolishing, removing or relocating any buildings or structures on lands acquired, including the cost of acquiring any lands to or on which such buildings or structures may be moved, relocated, or reconstructed; the cost to relocate residents or businesses from properties acquired for the project; the cost of any extensions, enlargements, additions and improvements; the cost of all labor, materials, machinery and equipment; all financing charges, and interest on all bonds prior to and during construction; and, if deemed advisable by the Authority of such construction, the cost of engineering, financial and legal services; plans, specifications, studies, and surveys; estimates of cost and of revenues and other expenses necessary or incident to determining the feasibility or practicability of constructing the project; administrative expenses; provisions for working capital; reserves for interest and for extensions, enlargements, additions and improvements; the cost of bond insurance and other devices designed to enhance the creditworthiness of the bonds; and such other expenses as may be necessary or incidental to the construction of the project, the financing of such construction and the planning of the project in operation.

"Owner" includes all persons having any interest or title in and to property, rights, franchises, easements and interests authorized to be acquired by this Act.

"Project" means the upgrading of the Interstate Route 95 Potomac River crossing in accord with the selected alternative developed by the Woodrow Wilson Memorial Bridge Coordination Committee. "Project" includes ongoing short-term rehabilitation and repair of the Bridge and may include one or more of the following:

1. Construction of a new bridge or bridges in the vicinity of the Bridge;

2. Construction of a tunnel in the vicinity of the Bridge;

3. Long-term rehabilitation or reconstruction of the Bridge;

4. Upon the bridges or within the tunnel described in subparagraphs 1, 2, and 3 of this paragraph, or in conjunction with work on Interstate Route 95 and other approach roadways as described in subparagraph 5 of this paragraph:

a. Work necessary to provide rights-of-way for a rail transit facility or bus or high occupancy vehicle lanes, including the construction or modifications of footings, piers, bridge decks, roadways, other structural support systems and related improvements; or

b. The construction of travel lanes for high occupancy vehicles or buses;

5. Work on Interstate Route 95 and other approach roadways if necessitated by, or necessary to accomplish, an activity described in subparagraph 1, 2, or 3 of this paragraph; or

6. Construction or acquisition of any building, improvement, addition, replacement, appurtenance, land, interest in land, easement, water right, air right, machinery, equipment, furnishing, landscaping, utility, roadway, or other facility that is necessitated by or necessary to accomplish an activity described in this paragraph.

Article II.

Additional Powers of the Authority.

Without in any manner limiting or restricting the powers heretofore given to the Authority, and contingent upon the execution of the agreement referred to in Chapter I, Article VI, the Authority is hereby authorized and empowered:

1. To establish, finance, construct, maintain, repair and operate the project;

2. To assume full rights of ownership of the existing Woodrow Wilson Bridge;

3. Subject to the approval of the Governor of Maryland, the Mayor of the District of Columbia, and the Virginia Commonwealth Transportation Board of the portions of the project in their respective jurisdictions, and in accordance with the recommendations of the Woodrow Wilson Memorial Bridge Coordination Committee, to determine the location, character, size and capacity of the project; to establish, limit and control such points of ingress to and egress from the project as may be necessary or desirable in the judgment of the Authority to ensure the proper operation and maintenance of the project; and to prohibit entrance to such project from any point or points not so designated;

4. To secure all necessary federal, state, and local authorizations, permits and approvals for the construction, maintenance, repair and operation of the project;

5. To adopt and amend bylaws for the regulation of its affairs and the conduct of its business;

6. To adopt and amend rules and regulations to carry out the powers granted by this section;

7. To acquire, by purchase or condemnation, in the name of the Authority, and to hold and dispose of real and personal property for the corporate purposes of the Authority;

8. To employ consulting engineers, a superintendent or manager of the project, and such other engineering, architectural, construction, accounting experts, inspectors, attorneys, and other employees as may be necessary; and, within the limitations prescribed in this Act, to prescribe their powers and duties, and fix their compensation;

9. To pay, from any available moneys, the cost of plans, specifications, surveys, estimates of cost and revenues, legal fees and other expenses necessary or incident to determining the feasibility or practicability of financing, constructing, maintaining, repairing and operating the project;

10. To issue revenue bonds of the Authority, for any of its corporate purposes, payable solely from the tolls and revenues pledged for their payment, and to refund its bonds, all as provided in this Act;

11. To fix and revise from time to time and to charge and collect tolls and other charges for the use of the project;

12. To make and enter into all contracts or agreements, as the Authority may determine, which are necessary or incidental to the performance of its duties and to the execution of the powers granted under this Act. The Authority may contract with any governmental agency or instrumentality for services within the power of the agency or authority related to the financing, construction or operation of the facilities and services to be provided;

13. To accept loans and grants of money, or materials or property at any time from the United States of America, the Commonwealth of Virginia, the State of Maryland, the District of Columbia or any agency or instrumentality thereof;

14. To adopt an official seal and alter the same at its pleasure;

15. Subject to Chapter I, Article VIII, to sue and be sued, plead and be impleaded, all in the name of the Authority;

16. To exercise any power usually possessed by private corporations performing similar functions including the right to expend, solely from funds provided under the authority of this Act, such funds as may be considered by the Authority to be advisable or necessary in advertising its facilities and services to the traveling public;

17. To enter into contracts with existing governmental entities in the Commonwealth of Virginia, the State of Maryland, or the District of Columbia, or with private entities, the purpose of which contracts or agreements would be to allow such parties to undertake all or portions of the project, including but not limited to design, engineering, financing, construction, and operation of the project, as the Authority may deem necessary;

18. To establish and maintain a police force, or to enter into a contract with an existing governmental entity in the State of Maryland, the Commonwealth of Virginia, or the District of Columbia to provide police services, as the Authority may deem necessary;

19. To enter into partnerships or grant concessions between the public and private sectors for the purpose of:

a. Financing, constructing, maintaining, improving or operating the project; or

b. Fostering development of new transportation-related technologies to be used in the construction or operation of the project, utilizing for such purposes the law of any signatory, as the Authority may in its sole discretion determine;

20. To carry out or contract with other entities to carry out such maintenance of traffic activities during the construction of the project as is considered necessary by the Authority to manage traffic and minimize congestion such as public information campaigns, improvements designed to encourage appropriate use of alternative routes, use of high occupancy vehicles and transit services, and deployment and operation of intelligent transportation technologies; and

21. To do all acts and things necessary or incidental to the performance of its duties and the execution of its powers under this Act.

Article III.

Incidental Powers.

The Authority shall have power to construct grade separations at intersections of the project with public highways and to change and adjust the lines and grades of such highways so as to accommodate the same to the design of such grade separation. The cost of such grade separations and any damage incurred in changing and adjusting the lines and grades of such highways shall be ascertained and paid by the Authority as a part of the cost of the project.

If the Authority shall find it necessary to change the location of any portion of any public highway, it shall cause the same to be reconstructed at such location as the Authority shall deem most favorable and be of substantially the same type and in as good condition as the original highway. The cost of such reconstruction and any damage incurred in changing the location of any such highway shall be ascertained and paid by the Authority as a part of the cost of the project.

Any public highway affected by the construction of the project may be vacated or relocated by the Authority in the manner now provided by law for the vacation or relocation of public roads, and any damages awarded on account thereof shall be paid by the Authority as a part of the cost of the project.

The Authority shall also have power to make regulations for the installation, construction, maintenance, repair, renewal, relocation and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances (herein called "public utility facilities") of any public utility in, on, along, over or under the project. Whenever the Authority shall determine that it is necessary that any such public utility facilities which now are, or hereafter may be, located in, on, along, over or under the project should be

relocated in the project, or should be removed from the project, the public utility owning or operating such facilities shall relocate or remove the same in accordance with the order of the Authority, provided that the cost and expenses of such relocation or removal, including the cost of installing such facilities in a new location or new locations, and the cost of any lands, or any rights or interests in lands, and any other rights, acquired to accomplish such relocation or removal, shall be ascertained and paid by the Authority as a part of the cost of the project. In case of any such relocation or removal of facilities, the public utility owning or operating the same, its successors or assigns, may maintain and operate such facilities, with the necessary appurtenances, in the new location or new locations, for as long a period, and upon the same terms and conditions, as it had the right to maintain and operate such facilities in their former location or locations.

Article IV.

Acquisition of Property.

The Authority is hereby authorized and empowered to acquire by purchase, whenever it shall deem such purchase expedient, solely from funds provided under the authority of this Act, such lands, structures, rights-of-way, property, rights, franchises, easements and other interest in lands, including lands lying under water and riparian rights, which are located within the Washington, D.C., metropolitan area, as it may deem necessary or convenient for the construction and operation of the project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof; and to take title thereto in the name of the Authority.

All counties, cities, towns and other political subdivisions and all public agencies and authorities of the signatories, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the Authority at the Authority's request, upon such terms and conditions as the governing bodies of such counties, cities, towns, political subdivisions, agencies or authorities may deem reasonable and fair and without the necessity for any advertisement, order of court or other action or formality, other than the regular and formal action of the authorities concerned, any real property which may be necessary or convenient to the effectuation of the authorized purposes of the Authority, including public roads and other real property already devoted to public use.

Whenever a reasonable price cannot be agreed upon, or whenever the owner is legally incapacitated or is absent, unknown or unable to convey valid title, the Authority is hereby authorized and empowered to acquire by condemnation or by the exercise of the power of eminent domain any lands, property, rights, rights-of-way, franchises, easements and other property deemed necessary or convenient for the construction or the efficient operation of the project or necessary in the restoration of public or private property damaged or destroyed.

Whenever the Authority acquires property under this article, it shall comply with the applicable federal law relating to relocation and relocation assistance. If there is no applicable federal law, the Authority shall comply with the provisions of the state law of the signatory in which the property is located governing relocation and relocation assistance.

In advance of undertaking any acquisition of property or easements in Maryland or the condemnation of such property, the Authority must obtain from the Maryland Board of Public Works approval of a plan identifying the properties or easements to be obtained for the project. In advance of undertaking any acquisition of property or easements in Virginia or the condemnation of such property, the Authority must obtain from the Virginia Commonwealth Transportation Board approval of a plan identifying the properties to be obtained for the project. Condemnation proceedings shall be in accordance with the provisions of state law of the signatory in which the property is located governing condemnation by the highway agency of such state. Nothing in this act shall be construed to authorize the authority to condemn the property of the Commonwealth of Virginia, the District of Columbia, or the State of Maryland.

Article V.

Procurement.

1. Except as provided in subdivisions 2, 3, and 6 of this article, and except in the case of procurement procedures otherwise expressly authorized by law, the Authority in conducting a procurement of goods, services, or construction shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this section and use the competitive procedure or combination of procedures that is most suitable under the circumstances of the procurement.

The Authority shall solicit sealed bids if (i) time permits the solicitation, submission, and evaluation of sealed bids; (ii) the award will be made on the basis of price and other price-related factors; (iii) it is not necessary to conduct discussions with the responding sources about their bids; and (iv) there is a reasonable expectation of receiving more than one sealed bid. If the Authority does not solicit sealed bids, it shall request competitive proposals.

2. The Authority may use procedures other than competitive procedures if:

a. the goods, services, or construction needed by the Authority are available from only one responsible source and no other type of property, services, or construction will satisfy the needs of the Authority;

b. the Authority's need for the property, services, or construction is of such unusual and compelling urgency that the Authority would be seriously injured unless the Authority limits the number of sources from which it solicits bids or proposals; or

c. the goods or services needed can be obtained through federal or other governmental sources at reasonable prices.

3. For the purpose of applying subdivision 2 a of this article:

a. in the case of a contract for goods, services, or construction to be awarded on the basis of acceptance of an unsolicited proposal, the goods, services, or construction shall be deemed to be available from only one responsible source if the source has submitted an unsolicited proposal that demonstrates a concept:

(1) that is unique and innovative or, in the case of a service, for which the source demonstrates a unique capability to provide the service; and

(2) the substance of which is not otherwise available to the Authority and does not resemble the substance of a pending competitive procurement.

b. in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment or the continued provision of highly specialized services, the goods, services, or construction may be deemed to be available from only the original source and may be procured through procedures other than competitive procedures if it is likely that award to a source other than the original source would result in:

(1) substantial duplication of cost to the Authority that is not expected to be recovered through competition; or

(2) unacceptable delays in fulfilling the Authority's needs.

4. If the Authority uses procedures other than competitive procedures to procure property, services, or construction under subdivision 2 b of this article, the Authority shall request offers from as many potential sources as is practicable under the circumstances.

5. a. To promote efficiency and economy in contracting, the Authority may use simplified acquisition procedures for purchases of property, services and construction.

b. For the purposes of this section, simplified acquisition procedures may be used for purchases for an amount that does not exceed the simplified acquisition threshold adopted by the federal government.

c. A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the procedures under subdivision a of this section.

d. In using simplified acquisition procedures, the Authority shall promote competition to the maximum extent practicable.

6. The Authority shall adopt policies and procedures to implement this article. The policies and procedures shall provide for publication of notice of procurements and other actions designed to secure competition where competitive procedures are used.

7. The Authority in its sole discretion may reject any and all bids or proposals received in response to a solicitation.

8. In structuring all procurements under this article, the Authority shall comply with federal laws and regulations, and other federal requirements set forth in grant agreements or elsewhere, as they may be amended from time to time, governing minority business enterprise participation.

Article VI.

Revenues.

The Authority is hereby authorized to fix, revise, charge and collect tolls for the use of the project, and to contract with any person, partnership, association or corporation desiring the use of the project, and to fix the terms, conditions, rents and rates of charges for such use.

Such tolls shall be so fixed and adjusted in respect of the aggregate of tolls from the project as to provide a fund sufficient in combination with other revenues, if any, to pay (i) the cost of maintaining, repairing and operating such project and (ii) the principal of and the interest on the bonds as the same shall become due and payable, and to create reserves for such purposes. Such tolls shall be not subject to supervision or regulation by any other authority, board, bureau, or agency of the Commonwealth of Virginia or the State of Maryland or the District of Columbia. The tolls and all other revenues derived from the project in connection with which the bonds of any issue shall have been issued, except such part thereof as may be necessary to pay such cost of maintenance, repair, and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust indenture securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust indenture in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due, and, upon the approval of the Governors of the Commonwealth of Virginia and the State of Maryland, and the Mayor of the District of Columbia, the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the tolls or other revenues or other moneys so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust indenture by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust indenture. Except as may otherwise be provided in such resolution or such trust indenture, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another.

Tolls shall not be set at rates such that toll revenues generated by the project exceed those necessary to meet requirements under any applicable trust indenture for the project.

Article VII.

Revenue Bonds.

The Authority is hereby authorized to provide for the issuance, at one time or from time to time, of revenue bonds of the Authority for the purpose of paying all or any part of the cost of the project or of any portion or portions thereof. The principal of and the interest of such bonds shall be payable solely from the funds provided in this compact for such payment. Any bonds of the Authority issued pursuant to this article shall not constitute a debt of the Commonwealth, or any political subdivision thereof other than the Authority, and shall so state on their face. Neither the members of the Authority nor any person executing such bonds shall be liable personally thereon by reason of the issuance thereof. The bonds of each issue shall be dated, shall bear interest at a rate or rates or in a manner, shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds.

The Authority shall determine the form and the manner of execution of the bonds and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The bonds may be issued in such form as the Authority may determine. The Authority may sell such bonds in such manner, either at public or private sale, and for such price as it may determine will best effect the purposes of this compact.

The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the project, and shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the

resolution authorizing the issuance of such bonds or in the trust indenture securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the resolution authorizing the issuance of such bonds or in the trust indenture securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed such cost, the surplus shall be deposited to the credit of the sinking fund for such bonds.

Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. Bonds may be issued under the provisions of this compact without obtaining the consent of any department, division, commission, board, bureau or agency of the compact signatories, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this article.

Article VIII.

Bonds Not to Constitute a Debt or Pledge of Taxing Power.

Revenue bonds issued under the provisions of this Act shall not be deemed to constitute a debt or a pledge of the faith and credit of the Authority or of any signatory government or political subdivision thereof, but such bonds shall be payable solely from the funds provided from tolls and other revenues. The issuance of revenue bonds under the provisions of this Act shall not directly or indirectly or contingently obligate the Authority, or any signatory government or political subdivision thereof, to levy or to pledge any form of taxation whatever. All such revenue bonds shall contain a statement on their face substantially to the foregoing effect.

Article IX.

Bonds Eligible for Investment.

Bonds issued by the Authority under the provisions of this Act are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any Commonwealth or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations is now or may hereafter be authorized by law.

Article X.

Trust Funds.

All moneys received pursuant to this Act, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this Act. The resolution authorizing the bonds of any issue or the trust indenture securing such bonds shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes thereof, subject to such regulations as this Act and such resolution or trust indenture may provide.

Article XI.

Trust Indenture.

In the discretion of the Authority, any bonds issued under the provisions of this Act may be secured by a trust indenture by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth. Such trust indenture or the resolution providing for the issuance of such bonds may pledge or assign the tolls and other revenues to be received, but shall not convey or mortgage the project or any part thereof.

Article XII.

Remedies.

Any holder of bonds issued under the provisions of this Act or any of the coupons appertaining thereto, and the trustee under any trust indenture, except to the extent the rights herein given may be restricted by such trust indenture or the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the Commonwealth of Virginia, the State of Maryland, or the District of Columbia or granted hereunder or under such trust indenture or the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this Act or by such trust indenture or resolution to be performed by the Authority or by any officer thereof, including the fixing, charging and collecting of tolls.

Article XIII.

Tax Exemption.

The exercise of the powers granted by this Act will be in all respects for the benefit of the people of the Commonwealth and for the increase of their commerce and prosperity, and as the operation and maintenance of the project will constitute the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon the project or any property acquired or used by the Authority under the provisions of this Act or upon the income therefrom, and the bonds issued under the provisions of this Act, and the income therefrom, shall at all times be free from taxation within the Commonwealth.

Article XIV.

Miscellaneous.

Any action taken by the Authority under the provisions of this Act may be authorized by resolution at any regular or special meeting, and each such resolution shall take effect immediately and need not be published or posted, except as otherwise specifically provided in this Act.

The project when constructed and opened to traffic shall be maintained and kept in good condition and repair by the Authority. The project shall also be policed and operated by such force of police, toll-takers and other operating employees as the Authority may in its discretion employ. The Authority may enter into a contractual agreement with an existing governmental entity in Maryland or Virginia to provide these services. An Authority police officer shall have all the powers granted to a peace officer and a police officer of the State of Maryland. However, an Authority police officer may exercise these powers only on property owned, leased, operated by, or under the control of the Authority, and may not exercise these powers on any other property unless:

1. Engaged in fresh pursuit of a suspected offender;

2. Specially requested or permitted to do so in a political subdivision by its chief executive officer or its chief police officer; or

3. Ordered to do so by the Governor of Virginia or Maryland, or the Mayor of the District of Columbia, as the circumstances may require.

All other police officers of the signatory parties and of each county, city, town or other political subdivision of the Commonwealth of Virginia through which any project, or portion thereof, extends shall have the same powers and jurisdiction within the limits of such projects as they have beyond such limits and shall have access to the project at any time for the purpose of exercising such powers and jurisdiction.

On or before August 31 in each year, the Authority shall make an annual report of its activities for the preceding fiscal year to the Governors of Maryland and Virginia and the Mayor of the District of Columbia. Each such report shall set forth a complete operating and financial statement covering its operations during the year. The Authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or operation of the project. The records, books and accounts of the Authority shall be subject to examination and inspection by duly authorized representatives of the governing bodies of Maryland, the District of Columbia and Virginia, and by any bondholder or bondholders at any reasonable time, provided the business of the Authority is not unduly interrupted or interfered with thereby.

Any member, agent or employee of the Authority who contracts with the Authority or is interested, either directly or indirectly, in any contract with the Authority or in the sale of any property, either real or personal, to the Authority shall be guilty of a misdemeanor, and, upon conviction, may be punished by a fine of not more than $1,000 or by imprisonment for not more than one year, or both.

Any person who uses the project and fails or refuses to pay the toll provided therefor shall be guilty of a misdemeanor, and, upon conviction, may be punished by a fine of not more than $100 or by imprisonment for not more than 30 days, or both.

CHAPTER 14.

VIRGINIA-NORTH CAROLINA INTERSTATE HIGH-SPEED RAIL COMPACT.

§ 33.2-1400. Virginia-North Carolina Interstate High-Speed Rail Compact.

§ 1. Short title.

This act shall be known and may be cited as the Virginia-North Carolina Interstate High-Speed Rail Compact.

§ 2. Compact established.

Pursuant to the invitation in 49 U.S.C. § 24101 Interstate Compacts, in which the United States Congress grants consent to states with an interest in a specific form, route, or corridor of intercity passenger rail service (including high-speed rail service) to enter into interstate compacts, there is hereby established the Virginia-North Carolina Interstate High-Speed Rail Compact.

§ 3. Agreement.

The Commonwealth of Virginia and the State of North Carolina agree, upon adoption of this compact:

1. To study, develop, and promote a plan for the design, construction, financing, and operation of interstate high-speed rail service through and between points in the Commonwealth of Virginia and the State of North Carolina and adjacent states;

2. To coordinate efforts to establish high-speed rail service at the federal, state, and local governmental levels;

3. To advocate for federal funding to support the establishment of high-speed interstate rail service within and through Virginia and North Carolina and to receive federal funds made available for rail development; and

4. To provide funding and resources to the Virginia-North Carolina High-Speed Rail Compact Commission from funds that are or may become available and are appropriated for that purpose.

§ 4. Commission established; appointment and terms of members; chairman; reports; Commission funds; staff.

The Virginia-North Carolina High-Speed Rail Compact Commission is hereby established as a regional instrumentality and a common agency of each signatory party, empowered in a manner hereinafter set forth to carry out the purposes of the Compact.

The Virginia members of the Commission shall be appointed as follows: three members of the House of Delegates appointed by the Speaker of the House of Delegates, and two members of the Senate appointed by the Senate Committee on Rules. The North Carolina members of the Commission shall be composed of five members as follows: two members of the Senate appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate, two members of the House of Representatives appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives, and one appointed by the Governor.

The chairman of the Commission shall be chosen by the members of the Commission from among its membership for a term of one year, and shall alternate between the member states.

The Commission shall meet at least twice each year, at least once in Virginia and once in North Carolina, and shall issue a report of its activities each year.

The Commission may utilize, for its operation and expenses, funds appropriated to it therefor by the legislatures of Virginia and North Carolina or received from federal sources.

Virginia members of the Commission shall receive compensation and reimbursement for the necessary and actual expenses as provided in the general appropriations act; North Carolina members of the Commission shall receive per diem, subsistence and travel allowances in accordance with applicable statutes of North Carolina, as appropriate.

Primary staff to the Commission shall be provided by the Virginia Department of Rail and Public Transportation and the North Carolina Department of Transportation.

SUBTITLE III.

TRANSPORTATION FUNDING AND DEVELOPMENT.

CHAPTER 15.

TRANSPORTATION FUNDING.

Article 1.

Virginia Transportation Infrastructure Bank.

§ 33.2-1500. Legislative findings and purposes.

The General Assembly finds that there exists in the Commonwealth a critical need for additional sources of funding to finance the present and future needs of the Commonwealth for the design and construction of highways, including toll facilities; mass transit; freight, passenger and commuter rail, including rolling stock; and port, airport, and other transportation facilities. This need can be alleviated in part through the creation of a transportation infrastructure bank. The purpose of such bank is to encourage the investment of both public and private funds and to make loans and other financial assistance available to localities, private entities, and other eligible borrowers to finance eligible transportation projects. The General Assembly determines that the creation of a transportation infrastructure bank for this purpose is in the public interest, serves a public purpose, and will promote the health, safety, welfare, convenience, or prosperity of the people of the Commonwealth.

§ 33.2-1501. Definitions.

As used in this article unless the context requires a different meaning:

"Bank" means the Virginia Transportation Infrastructure Bank created in § 33.2-1502.

"Cost," as applied to any project financed under the provisions of this article, means the total of all costs, including the costs of planning, design, right-of-way acquisition, engineering, and construction, incurred by an eligible borrower or other project sponsor as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. "Cost" also includes capitalized interest; reasonably required reserve funds; and financing, credit enhancement, and issuance costs.

"Credit enhancements" means surety bonds, insurance policies, letters of credit, guarantees, and other forms of collateral or security.

"Creditworthiness" means attributes such as revenue stability, debt service coverage, reserves, and other factors commonly considered in assessing the strength of the security for indebtedness.

"Eligible borrower" means any (i) private entity; (ii) governmental entity; (iii) instrumentality, corporation, or entity established by any of the foregoing pursuant to § 33.2-1505; or (iv) combination of two or more of the foregoing.

"Finance" and any variation of the term, when used in connection with a cost or a project, includes both the initial financing and any refinancing of the cost or project and any variation of such terms.

"Governmental entity" means any (i) locality; (ii) local, regional, state, or federal entity; transportation authority, planning district, commission, or political subdivision created by the General Assembly or pursuant to the Constitution and laws of the Commonwealth; or public transportation entity owned, operated, or controlled by one or more local entities; (iii) entity established by interstate compact; (iv) instrumentality, corporation, or entity established by any of the foregoing pursuant to § 33.2-1505; or (v) combination of two or more of the foregoing.

"Grant" means a transfer of moneys or property that does not impose any obligation or condition on the grantee to repay any amount to the transferor other than in connection with assuring that the transferred moneys or property will be spent or used in accordance with the governmental purpose of the transfer. "Grant" includes direct cash payments made to pay or reimburse all or a portion of interest payments made by a grantee on a debt obligation. As provided in §§ 33.2-1502 and 33.2-1503, only governmental entities may receive grants of moneys or property held in or for the credit of the Bank.

"Loan" means an obligation subject to repayment that is provided by the Bank to an eligible borrower to finance all or a part of the eligible cost of a project incurred by the eligible borrower or other project sponsor. A loan may be disbursed (i) in anticipation of reimbursement (including an advance or draw under a credit enhancement instrument), (ii) as direct payment of eligible costs, or (iii) to redeem or defease a prior obligation incurred by the eligible borrower or other project sponsor to finance the eligible costs of a project.

"Management agreement" means the memorandum of understanding or interagency agreement among the manager, the Secretary of Finance, and the Board as authorized under subsection B of § 33.2-1502.

"Manager" means the Virginia Resources Authority serving as the manager, administrator, and trustee of funds disbursed from the Bank in accordance with the provisions of this article and the management agreement.

"Other financial assistance" means, but is not limited to, grants, capital, or debt reserves for bonds or debt instrument financing, provision of letters of credit and other forms of credit enhancement, and other lawful forms of financing and methods of leveraging funds that are approved by the manager.

"Private entity" means any private or nongovernmental entity that has executed an interim or comprehensive agreement to develop and construct a transportation infrastructure project pursuant to the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.).

"Project" means (i) the construction, reconstruction, rehabilitation, or replacement of any interstate, state highway, toll road, tunnel, local street or road, or bridge; (ii) the construction, reconstruction, rehabilitation, or replacement of any (a) mass transit, (b) commuter, passenger, or freight rail, (c) port, (d) airport, or (e) commercial space flight facility; or (iii) the acquisition of any rolling stock, vehicle, or equipment to be used in conjunction with clause (i) or (ii).

"Project obligation" means any bond, note, debenture, interim certificate, grant or revenue anticipation note, lease or lease-purchase or installment sales agreement, or credit enhancements issued, incurred, or entered into by an eligible borrower to evidence a loan, or any financing agreements, reimbursement agreements, guarantees, or other evidences of an obligation of an eligible borrower or other project sponsor to pay or guarantee a loan.

"Project sponsor" means any private entity or governmental entity that is involved in the planning, design, right-of-way acquisition, engineering, construction, maintenance, or financing of a project.

"Reliable repayment source" means any means by which an eligible borrower or other project sponsor generates funds that are dedicated to the purpose of retiring a project obligation.

"Substantial project completion" means the opening of a project for vehicular or passenger traffic or the handling of cargo and freight.

§ 33.2-1502. Creation of the Virginia Transportation Infrastructure Bank.

A. There is hereby created in the state treasury a special nonreverting, revolving loan fund, known as the Virginia Transportation Infrastructure Bank, that is a subfund of the Transportation Trust Fund, established pursuant to § 33.2-1524. The Bank shall be established on the books of the Comptroller. The Bank shall be capitalized with moneys appropriated by the General Assembly and credited to the Bank. Disbursements from the Bank shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner of Highways or his or her designee. Payments on project obligations and interest earned on the moneys in the Bank shall be credited to the Bank. Any moneys remaining in the Bank, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Bank. Notwithstanding anything to the contrary set forth in this article or in the management agreement, the Board will have the right to determine the projects for which loans or other financial assistance may be provided by the Bank. Moneys in the Bank shall be used solely for the purposes enumerated in subsections C and D.

B. The Board, the manager, and the Secretary of Finance are authorized to enter into a management agreement which may include provisions (i) setting forth the terms and conditions under which the manager will advise the Board on the financial propriety of providing particular loans or other financial assistance, (ii) setting forth the terms and conditions under which the substantive requirements of subsections C through F and § 33.2-1505 will be applied and administered, and (iii) authorizing the manager to request the Board to disburse from the moneys in the Bank the reasonable costs and expenses the manager may incur in the management and administration of the Bank and a reasonable fee to be approved by the Board for the manager's management and administrative services.

C. 1. Moneys deposited in the Bank shall be used for the purpose of making loans and other financial assistance to finance projects.

2. Each project obligation shall be payable, in whole or in part, from reliable repayment sources pledged for such purpose.

3. The interest rate on a project obligation shall be determined by reference to the current market rates for comparable obligations, the nature of the project and the financing structure therefor, and the creditworthiness of the eligible borrower and other project sponsors.

4. The repayment schedule for each project obligation shall require (i) the amortization of principal beginning within five years following the later of substantial project completion or the date of incurrence of the project obligation and (ii) a final maturity date of not more than 35 years following substantial project completion.

D. A portion not to exceed 20 percent of the capitalization of the Bank may be used for grants to governmental entities to finance projects.

E. The pledge of reliable repayment sources and other property securing any project obligation may be subordinate to the pledge securing any other senior debt obligations incurred to finance the project.

F. Notwithstanding subdivision C 4, the manager may at any time following substantial project completion defer payments on a project obligation if the project is unable to generate sufficient revenues to pay the scheduled payments.

G. No loan or other financial assistance may be provided or committed to be provided by the Bank in a manner that would cause such loan or other financial assistance to be tax-supported debt within the meaning of § 2.2-2713 or be deemed to constitute a debt of the Commonwealth or a pledge of the full faith and credit of the Commonwealth but shall be payable solely from legally available moneys held by the Bank.

H. Neither the Bank nor the manager is authorized or empowered to be or to constitute (i) a bank or trust company within the jurisdiction or under the control of the Commonwealth or an agency thereof or the Comptroller of Currency of the U.S. Treasury Department or (ii) a bank, banker, or dealer in securities within the meaning of, or subject to the provisions of, any securities, securities exchange, or securities dealers law of the United States or of the Commonwealth.

I. The Board or the manager may establish or direct the establishment of federal and state accounts or subaccounts as may be necessary to meet any applicable federal law requirements or desirable for the efficient administration of the Bank in accordance with this article.

§ 33.2-1503. Eligibility and project selection.

A. Any entity constituting an eligible borrower or other project sponsor is eligible to apply to the Board for project financing from the Bank.

B. Notwithstanding subsection A, only governmental entities are eligible to apply for a grant from the Bank.

C. Any governmental entity applying for a grant must demonstrate, among other things as determined by the manager, that the project cannot be financed on reasonable terms or would otherwise be financially infeasible without the grant.

D. All applicants for a loan or other financial assistance (other than a grant) must file an application with the Board, which must include all items determined by the Board in consultation with the manager to be necessary and appropriate for the Board to determine whether or not to approve the loan, including the availability of reliable repayment sources to retire the project obligation as well as creditworthiness.

E. Each applicant for a loan or other financial assistance must demonstrate that the project is of local, regional, or statewide significance and that it meets the goal of generating economic benefits, improving air quality, reducing congestion, or improving safety through enhancement of the state transportation network. Another criterion to be considered is whether or not the loan or other financial assistance will enable the project to be completed at an earlier date than would otherwise be feasible. The Board shall issue guidelines for scoring projects in accordance with the criteria set out in this subsection and any other criteria deemed necessary and appropriate for evaluating projects as determined by the Board in consultation with the manager and shall apply the scoring guidelines to each proposed project. Further, the Board shall promptly publish each proposed project and its score using the scoring guidelines.

F. All projects for which a loan or other financial assistance is provided must meet and remain in compliance with the policies and guidelines established by the Board and the manager.

§ 33.2-1504. Grants from the Commonwealth Transportation Board.

The Board may make grants of money or property to the Bank for the purpose of enabling it to carry out its corporate purposes and for the exercise of its powers. This section shall not be construed to limit any other power the Board may have to make grants to the Bank.

§ 33.2-1505. Project obligations.

A. Subject to the terms determined by the manager in accordance with the management agreement, each loan or other financial assistance (which for purposes of this section shall not include grants) shall be evidenced or guaranteed by project obligations provided to finance the costs of any project. The manager may also sell any project obligations so acquired and apply the proceeds of such a sale to the making of additional loans and the provision of other financial assistance for financing the cost of any project or for any other corporate purpose of the Bank.

B. The manager may require, as a condition to provision of a loan or other financial assistance and the acquisition of any project obligations, that the eligible borrower or any other project sponsor covenant to perform any of the following:

1. Establish and collect tolls, rents, rates, fees, and other charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of operation, maintenance, replacement, renewal, and repairs of the project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of and premium, if any, and interest on the project obligations; and (iii) any amounts necessary to create and maintain any required reserve, including any rate stabilization fund deemed necessary or appropriate by the manager to offset the need, in whole or part, for future increases in tolls, rents, rates, fees, or charges;

2. Create and maintain a special fund or funds as security for or the source of the scheduled payments on the project obligations or for the operation, maintenance, repair, or replacement of the project or any portions thereof or other property of the eligible borrower or any other project sponsor and deposit into any fund or funds amounts sufficient to make any payments as they become due and payable;

3. Create and maintain other special funds as required by the manager; and

4. Perform other acts, including the conveyance or mortgaging of real and personal property together with all right, title, and interest therein to secure project obligations, or take other actions as may be deemed necessary or desirable by the manager to secure payment of the project obligations and to provide for remedies in the event of any default or nonpayment by the eligible borrower or any other project sponsor, including any of the following:

a. The procurement of credit enhancements or liquidity arrangements for project obligations from any source, public or private, and the payment therefor of premiums, fees, or other charges.

b. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, facilities, or systems, for the purpose of operations and financing, and the pledging of the revenues from such combined projects, undertakings, facilities, and systems to secure project obligations issued in connection with such combination or any part or parts thereof.

c. The payment of such fees and charges in connection with the acquisition of the project obligations as may be determined by the manager.

C. All eligible borrowers and other project sponsors, including any governmental entities, providing project obligations to the Bank are authorized to perform any acts, take any action, adopt any proceedings, and make and carry out any contracts with the Bank, the manager, or the Board that are contemplated by this article. Such contracts need not be identical among all eligible borrowers or other project sponsors, but may be structured as determined by the manager according to the needs of the contracting eligible borrowers and other project sponsors and the purposes of the Bank.

In addition, subject to the approval of the manager, any project sponsor is authorized to establish and contract with a special purpose or limited purpose instrumentality, corporation, or other entity for the purpose of having such entity serve as the eligible borrower with respect to a particular project.

§ 33.2-1506. Exemption from taxation; exemption from Virginia Public Procurement Act.

A. The Bank will be performing an essential governmental function in the exercise of the powers conferred upon it by this article. Accordingly, the Bank shall not be required to pay any taxes or assessments to the Commonwealth or its localities or any political subdivision thereof upon any capital, moneys or any property

or upon any operations of the Bank or the income therefrom, or any taxes or assessments upon any project or any property or project obligation acquired by the Bank under the provisions of this article or upon the income therefrom.

B. The provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the Bank in the exercise of any power conferred under this article.

§ 33.2-1507. Reporting requirement.

A. No loan or other financial assistance shall be awarded from the Bank until the Secretary has provided copies of the management agreement and related criteria and guidelines to the Chairmen of the House Committees on Appropriations, Finance, and Transportation and the Senate Committees on Finance and Transportation.

B. Within 30 days after each six-month period ending June 30 and December 31, the manager shall provide a report to the Chairmen of the House Committees on Appropriations, Finance, and Transportation and the Senate Committees on Finance and Transportation, which shall include the amounts of loans and other financial assistance provided by the Bank and the projects for which the loans and other financial assistance were provided.

Article 2.

Transportation Partnership Opportunity Fund.

§ 33.2-1508. Transportation Partnership Opportunity Fund.

A. There is hereby created the Transportation Partnership Opportunity Fund (the Fund) to be used by the Governor to encourage the development of transportation projects through design-build pursuant to subsection B of § 33.2-209, the Public-Private Transportation Act (§ 33.2-1800 et seq.) and to provide funds to address the transportation aspects of economic development opportunities. The Fund shall consist of any funds appropriated to it by the general appropriation act and revenue from any other source, public or private. The Fund shall be established on the books of the Comptroller, and any funds remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. All interest and dividends that are earned on the Fund shall be credited to the Fund. The Governor shall report to the Chairmen of the House Committees on Appropriations, Finance, and Transportation and the Senate Committees on Finance and Transportation as funds are awarded in accordance with this section.

B. The Fund shall be a component of the Commonwealth Transportation Fund but not a component or subcomponent of the Transportation Trust Fund or the Highway Maintenance and Operating Fund. Provisions of this title and Title 58.1 relating to the allocations or disbursals of proceeds of the Commonwealth Transportation Fund, the Transportation Trust Fund, or the Highway Maintenance and Operating Fund shall not apply to the Fund.

C. Funds shall be awarded from the Fund by the Governor as grants, revolving loans, or other financing tools and equity contributions to (i) an agency or political subdivision of the Commonwealth or (ii) a private entity or operator that has submitted a proposal or signed a comprehensive agreement to develop a transportation facility pursuant to the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.). Loans shall be approved by the Governor and made in accordance with procedures established by the Board and approved by the Comptroller. Loans shall be interest-free and shall be repaid to the Fund. The Governor may establish the duration of any loan, but such term shall not exceed seven years. The Department shall be responsible for monitoring repayment of such loans and reporting the receivables to the Comptroller as required.

D. Grants or revolving loans may be used for transportation capacity development on and off site; road, rail, mass transit, or other transportation access costs beyond the funding capability of existing programs; studies of transportation projects, including environmental analysis, geotechnical assessment, survey, design and engineering, advance right-of-way acquisition, traffic analysis, toll sensitivity studies, financial analysis; or anything else permitted by law. Funds may be used for any transportation project or any transportation facility. Any transportation infrastructure completed with moneys from the Fund shall not become private property, and the results of any studies or analysis completed as a result of a grant or loan from the Fund shall be property of the Commonwealth.

E. The Board, in consultation with the Secretary of Transportation and the Secretary of Commerce and Trade, shall develop guidelines and criteria that shall be used in awarding grants or making loans from the Fund; however, no grant shall exceed $5 million and no loan shall exceed $30 million. No grant or loan shall be awarded until the Governor has provided copies of the guidelines and criteria to the Chairmen of the House Committees on Appropriations, Finance, and Transportation and the Senate Committees on Finance and Transportation. The guidelines and criteria shall include provisions including the number of jobs and amounts of investment that must be committed in the event moneys are being used for an economic development project, a statement of how the studies and analysis to be completed using moneys from the Fund will advance the development of a transportation facility, a process for the application for and review of grant and loan requests, a timeframe for completion of any work, the comparative benefit resulting from the development of a transportation project, assessment of the ability of the recipient to repay any loan funds, and other criteria as necessary to support the timely development of transportation projects. The criteria shall also include incentives to encourage matching funds from any other local, federal, or private source.

F. Within 30 days of each six-month period ending June 30 and December 31, the Governor shall provide a report to the Chairmen of the House Committees on Appropriations, Finance, and Transportation and the Senate Committees on Finance and Transportation that shall include the following information: the locality in which the project is being developed; the amount of the grant or loan made or committed from the Fund and the purpose for which it will be used; the number of jobs created or projected to be created; and the amount of a company's investment in the Commonwealth if the project is part of an economic development opportunity.

G. The Governor shall provide grants and commitments from the Fund in an amount not to exceed the total value of the moneys contained in the Fund. If the Governor commits funds for years beyond the fiscal years covered under the existing appropriation act, the State Treasurer shall set aside and reserve the funds the Governor has committed, and the funds set aside and reserved shall remain in the Fund for those future fiscal years. No grant or loan shall be payable in the years beyond the existing appropriation act unless the funds are currently available in the Fund.

Article 3.

Funds for Access Roads.

§ 33.2-1509. Funds for access roads to economic development sites and airports; construction, maintenance, etc., of such roads.

A. Notwithstanding any other provision of law, there shall be appropriated to the Board funds derived from taxes on motor fuels, fees and charges on motor vehicle registrations, road taxes or any other state revenue allocated for highway purposes, which shall be used by the Board for the purposes hereinafter specified, after deducting the costs of administration before any of such funds are distributed and allocated for any road or street purposes.

Such funds shall be expended by the Board for constructing, reconstructing, maintaining or improving access roads within localities to economic development sites on which manufacturing, processing, research and development facilities, distribution centers, regional service centers, corporate headquarters, or other establishments that also meet basic employer criteria as determined by the Virginia Economic Development Partnership in consultation with the Virginia Department of Small Business and Supplier Diversity will be built under firm contract or are already constructed and to licensed, public-use airports; in the event there is no such establishment or airport already constructed or for which the construction is under firm contract, a locality may guarantee to the Board by bond or other acceptable device that such will occur and, should no establishment or airport acceptable to the Board be constructed or under firm contract within the time limits of the bond, such bond shall be forfeited. The time limits of the bond shall be based on regular review and consideration by the Board. Towns that receive highway maintenance payments under § 33.2-319 shall be considered separately from the counties in which they are located when receiving allocations of funds for access roads.

B. In deciding whether or not to construct or improve any such access road, and in determining the nature of the road to be constructed, the Board shall base its considerations on the cost thereof in relation to the volume and nature of the traffic to be generated as a result of developing the airport or the economic development site. Within any economic development site or airport, the total volume of traffic to be generated

shall be taken into consideration in regard to the overall cost thereof. No such access road shall be constructed or improved on a privately owned economic development site.

C. Any access road constructed or improved under this section shall constitute a part of the secondary state highway system or the road system of the locality in which it is located and shall thereafter be constructed, reconstructed, maintained, and improved as other roads or highways in such system.

§ 33.2-1510. Fund for access roads and bikeways to public recreational areas and historical sites; construction, maintenance, etc., of such facilities.

A. The General Assembly finds and declares that there is an increasing demand by the public for more public recreational areas throughout the Commonwealth, therefore creating a need for more access to these areas. There are also many sites of historical significance to which access is needed.

The General Assembly hereby declares it to be in the public interest that access roads and bikeways to public recreational areas and historical sites be provided by using funds obtained from motor fuel tax collections on motor fuel used for propelling boats and ships and funds contained in the highway portion of the Transportation Trust Fund.

B. The Board shall, from funds allocated to the primary system, secondary system, or urban system, set aside the sum of $3 million initially. This fund shall be expended by the Board for the construction, reconstruction, maintenance, or improvement of access roads and bikeways within localities. At the close of each succeeding fiscal year, the Board shall replenish this fund to the extent it deems necessary to carry out the purpose intended, provided the balance in the fund plus the replenishment does not exceed $3 million.

C. Upon the setting aside of the funds as provided in this section, the Board shall construct, reconstruct, maintain, or improve access roads and bikeways to public recreational areas and historical sites upon the following conditions:

1. When the Director of the Department of Conservation and Recreation has designated a public recreational area as such or when the Director of the Department of Historic Resources has determined a site or area to be historic and recommends to the Board that an access road or bikeway be provided or maintained to that area;

2. When the Board pursuant to the recommendation from the Director of the Department of Conservation and Recreation declares by resolution that the access road or bikeway be provided or maintained;

3. When the governing body of the locality in which the access road or bikeway is to be provided or maintained passes a resolution requesting the road; and

4. When the governing body of the locality in which the bikeway is to be provided or maintained adopts an ordinance pursuant to Article 7 (§ 15.2-2280 et seq.) of Chapter 22 of Title 15.2.

No access road or bikeway shall be constructed, reconstructed, maintained, or improved on privately owned property.

D. Any access road constructed, reconstructed, maintained, or improved pursuant to the provisions of this section shall become part of the primary state highway system, the secondary state highway system or the road system of the locality in which it is located in the manner provided by law, and shall thereafter be constructed, reconstructed, maintained, and improved as other roads or highways in such systems. Any bikeway path constructed, reconstructed, maintained, or improved pursuant to the provisions of this section that is not situated within the right-of-way limits of an access road that has become, or which is to become, part of the primary state highway system, the secondary state highway system, or the road system of the locality, shall, upon completion, become part of and be regulated and maintained by the authority or agency maintaining the public recreational area or historical site. It shall be the responsibility of the authority, agency, or locality requesting that a bicycle path be provided for a public recreational or historical site to provide the right-of-way needed for the construction, reconstruction, maintenance, or improvement of the bicycle path if such is to be situated outside the right-of-way limits of an access road.

To maximize the impact of the Fund, not more than $400,000 of recreational access funds may be allocated for each individual access road project to or within any public recreational area or historical site operated by a state agency and not more than $250,000 of recreational access funds may be allocated for each individual access road project to or within a public recreational area or historical site operated by a locality or an authority with an additional $100,000 if supplemented on a dollar-for-dollar basis by the locality or

authority from other than highway sources. Not more than $75,000 of recreational access funds may be allocated for each individual bikeway project to a public recreational area or historical site operated by a state agency and not more than $60,000 of recreational access funds may be allocated for each individual bikeway project to a public recreational area or historical site operated by a locality or an authority with an additional $15,000 if supplemented on a dollar-for-dollar basis by a locality or authority from other than highway sources.

The Board, with the concurrence of the Director of the Department of Conservation and Recreation, is hereby authorized to establish guidelines to carry out the provisions of this section.

Article 4.

Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes Act of 2011.

§ 33.2-1511. Definitions.

As used in this article, unless the context requires a different meaning:

"Federal highway reimbursements" means all federal-aid highway construction reimbursements and any other federal highway assistance received from time to time by the Commonwealth under or in accordance with Title 23 of the United States Code or any successor program established under federal law from the Federal Highway Administration and any successor or additional federal agencies.

"GARVEE," a grant anticipation revenue vehicle, means an "eligible debt financing instrument" as defined under 23 U.S.C. § 122, the principal of and interest on which and certain other costs associated therewith may be reimbursed by federal highway reimbursements.

"Notes" means those notes authorized and issued pursuant to § 33.2-1512.

"Project-specific reimbursements" means the federal highway reimbursements received by the Commonwealth only with respect to the project or projects to be financed by the Notes or any series thereof.

"Series" means any grouping of Notes issued as designated as such by the Board as necessary or desirable for administrative convenience, satisfaction of federal tax or securities law requirements, or any similar purpose.

§ 33.2-1512. Authorization of Notes.

The Board is hereby authorized, by and with the consent of the Governor, to issue, pursuant to the provisions of the Transportation Development and Revenue Bond Act (§ 33.2-1700 et seq.), in one or more series revenue obligations of the Commonwealth to be designated "Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes, Series _____" (the Notes), provided that the aggregate principal amount outstanding at any time shall not exceed the amount authorized pursuant to the second enactments of Chapters 1019 and 1044 of the Acts of Assembly of 2000, as amended by Chapter 655 of the Acts of Assembly of 2005, less any principal amounts outstanding from revenue obligations issued pursuant to those enactments prior to July 1, 2011, and exclusive of (i) the amount of any revenue obligations that may be issued to refund Notes issued under this article or the revenue obligations issued under those enactments in accordance with § 33.2-1727 and (ii) any amounts issued for financing expenses (including any original issue discount).

§ 33.2-1513. Use of proceeds of Notes.

A. The net proceeds of the Notes shall be used exclusively for the purpose of providing funds, together with any other available funds, for paying the costs incurred or to be incurred for construction or funding of such projects to be designated by the Board.

B. The proceeds of Notes, including any premium received on the sale thereof, shall be made available by the Board to pay costs of the projects and, where appropriate, may be paid to any authority, locality, commission, or other entity for the purposes of paying for costs of the projects. The proceeds of Notes may be used together with any federal, local, or private funds that may be made available for such purpose. The proceeds of Notes, together with any investment earnings thereon, may at the discretion of the Board secure the payment of principal or purchase price of and redemption premium, if any, and interest on Notes.

§ 33.2-1514. Details of Notes.

A. The terms and structure of each issue of Notes shall be determined by the Board, subject to approval by the Treasury Board if required in accordance with § 2.2-2416. The Notes of each issue shall be dated; shall be issued in a principal amount (subject to the limitation as to amount outstanding at any one time set forth in §

33.2-1512); shall bear interest at such rate or rates that may be fixed, adjustable, variable, or a combination thereof, and may be determined by a formula or other method; shall mature at such time or times not exceeding 20 years after the issuance thereof; and may be made subject to purchase or redemption before their maturity or maturities, at such price or prices and under such terms and conditions, all as may be determined by the Board. The Board shall determine the form and series designations of Notes, whether Notes are certificated or uncertificated, and fix the authorized denomination or denominations of Notes and the place or places of payment of principal or purchase price of, and redemption premium, if any, and interest on, Notes, which may be at the office of the State Treasurer or any bank or trust company within or outside of the Commonwealth. The principal or purchase price of, and redemption premium, if any, and interest on, Notes shall be made payable in lawful money of the United States of America. Each issue of Notes may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments of principal or purchase price of and redemption premium, if any, and interest on such Notes. All Notes shall have and are hereby declared to have, as between successive holders, all the qualities and incidents of negotiable instruments under the negotiable instruments law of the Commonwealth.

B. The Board may sell Notes from time to time at public or private sale, by competitive bidding, negotiated sale, or private placement, for such price or prices as it may determine to be in the best interests of the Commonwealth.

§ 33.2-1515. Form and manner of execution; signature of person ceasing to be officer.

The Notes shall be signed on behalf of the Board by the chairman or vice-chairman of the Board, or shall bear the facsimile signature of such officer, and shall bear the official seal of the Board, which shall be attested by the manual or facsimile signature of the secretary or assistant secretary of the Board. In the event that Notes shall bear the facsimile signature of the chairman or vice-chairman of the Board, such Notes shall be signed by such administrative assistant as the chairman of the Board shall determine or by any registrar/paying agent that may be designated by the Board. In case any officer whose signature or a facsimile of whose signature appears on any Notes shall cease to be such officer before the delivery of such Notes, such signature or facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in office until such delivery.

§ 33.2-1516. Authority to obtain GARVEE approval.

The Board is authorized to seek any necessary approvals for the issuance of Notes as GARVEEs from the Federal Highway Administration and any successor or additional federal agencies.

§ 33.2-1517. Expenses.

All expenses incurred under this article or in connection with issuance of Notes shall be paid from the proceeds of such Notes or from any available funds as the Board shall determine.

§ 33.2-1518. Deposit of proceeds.

The proceeds of each series of Notes shall be placed by the State Treasurer in a special fund in the state treasury or may be placed with a trustee in accordance with § 33.2-1716 and shall be disbursed only for the purpose for which such series is issued.

§ 33.2-1519. Other funds.

The Board is hereby authorized to receive any other funds that may be made available to pay costs of the projects and, subject to appropriation by the General Assembly or allocation or designation by the Board, to make available the same to the payment of the principal or purchase price of, and redemption premium, if any, and interest on Notes authorized hereby and to enter into the appropriate agreements to allow for those funds to be paid into the state treasury, or to a trustee in accordance with § 33.2-1716 to pay a part of the costs of the projects or to pay principal or purchase price of, and redemption premium, if any, and interest on Notes.

§ 33.2-1520. Application of project-specific reimbursements.

A. In accordance with Article X, Section 7 of the Constitution of Virginia and § 2.2-1802, all federal highway reimbursements are paid into the state treasury. In connection with each series of Notes issued pursuant to this article, the Board shall establish a fund in accordance with § 33.2-1720 either in the state treasury or with a trustee in accordance with § 33.2-1716, which secures and is used for the payment of such series of Notes to the credit of which there shall be deposited such amounts, appropriated therefor by the General Assembly, as are required to pay principal or purchase price of and redemption premium, if any, and

interest on Notes, as and when due and payable, (i) first from the project-specific reimbursements; (ii) then, at the discretion of the Board, to the extent required, from legally available revenues of the Transportation Trust Fund; and (iii) then from such other funds, if any, that are designated by the General Assembly for such purpose.

B. The Board is authorized to provide that the pledge of federal highway reimbursements and any other federal highway assistance received for all or any series of the Notes will be subordinate to any prior pledge thereof to notes issued pursuant to subdivision 8 of § 33.2-1701 and the second enactments of Chapters 1019 and 1044 of the Acts of Assembly of 2000, as amended, and that the obligation to make transfers of federal highway reimbursements and any other federal highway assistance received or other amounts into any fund established under subsection A will be subordinate to the obligation to make any required payments or deposits on or with respect to notes issued pursuant to subdivision 8 of § 33.2-1701 and the second enactments of Chapters 1019 and 1044 of the Acts of Assembly of 2000, as amended.

§ 33.2-1521. Investment of proceeds and other amounts.

Notes proceeds and moneys in any reserve funds and sinking funds in respect of Notes shall be invested by the State Treasurer in accordance with the provisions of general law relating to the investment of such funds belonging to or in the control of the Commonwealth or by a trustee in accordance with § 33.2-1716.

§ 33.2-1522. Exemption from taxation.

The interest income from and any profit made on the sale of the Notes issued under the provisions of this article shall at all times be free and exempt from taxation by the Commonwealth and by any municipality, county, or other political subdivision thereof.

§ 33.2-1523. Notes as eligible securities.

All Notes issued under the provisions of this article are hereby made securities in which all persons and entities listed in § 33.2-1713 may properly and legally invest funds under their control.

Article 5.

Transportation Trust Fund.

§ 33.2-1524. Transportation Trust Fund.

There is hereby created in the Department of the Treasury a special nonreverting fund to be known as the Transportation Trust Fund, consisting of:

1. Funds remaining for highway construction purposes among the highway systems pursuant to § 33.2-358.

2. The additional revenues generated by enactments of Chapters 11, 12, and 15 of the 1986 Acts of Assembly, Special Session I, and designated for this fund.

3. Tolls and other revenues derived from the projects financed or refinanced pursuant to this title that are payable into the state treasury and tolls and other revenues derived from other transportation projects, which may include upon the request of the applicable appointed local governing body, as soon as their obligations have been satisfied, such tolls and revenue derived for transportation projects pursuant to the Chesapeake Bay Bridge and Tunnel District and Commission established in Chapter 22 (§ 33.2-2200 et seq.) and to the Richmond Metropolitan Authority established in Chapter 29 (§ 33.2-2900 et seq.), or if the appointed local governing body requests refunding or advanced refunding by the Board and such refunding or advanced refunding is approved by the General Assembly. Such funds shall be held in separate subaccounts of the Transportation Trust Fund to the extent required by law or the Board.

4. Such other funds as may be appropriated by the General Assembly from time to time and designated for the Transportation Trust Fund.

5. All interest, dividends, and appreciation that may accrue to the Transportation Trust Fund and the Highway Maintenance and Operating Fund.

6. All amounts required by contract to be paid over to the Transportation Trust Fund.

7. Concession payments paid to the Commonwealth by a private entity pursuant to the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.).

§ 33.2-1525. Administration of Transportation Trust Fund.

A. The Transportation Trust Fund shall be established on the books of the Comptroller so as to segregate the amounts appropriated to the Transportation Trust Fund and the amounts earned or accumulated by such

Transportation Trust Fund. No portion of the Transportation Trust Fund shall be used for a purpose other than as provided in this section. Any moneys remaining in the Transportation Trust Fund at the end of a biennium shall not revert to the general fund but shall remain in the Transportation Trust Fund to be used for the purposes set forth in §§ 33.2-1524, 33.2-1526, and 33.2-1529 and shall accumulate interest and dividends throughout the existence of the Transportation Trust Fund. Whenever in the Board's opinion there are moneys in the Transportation Trust Fund in excess of the amount required to meet the current needs and demands of the transportation program, the Board may invest such excess funds in securities that, in its judgment, will be readily convertible into money. Such securities may include debentures and other government and corporate obligations; common and preferred stocks limited to 30 percent of total trust funds investments based on cost; "prime quality" commercial paper, as defined and limited by § 2.2-4502; bankers' acceptances; bonds; money market funds; and overnight, term, and open repurchase agreements. The investment of moneys held in the Transportation Trust Fund shall be administered by the state treasury under guidelines adopted by the Board pursuant to this section.

The Treasurer may, at his option, manage such moneys or hire professional outside investment counsel to manage part or all of such moneys.

The selection of services related to the management, purchase, or sale of authorized investments shall be governed by the standard provided in this section and shall not be subject to the provisions of Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2.

B. When investments are made in accordance with this section, no Board member, Board employee, Department of Transportation employee, Department of Rail and Public Transportation employee, or treasury official shall be personally liable for any loss therefrom in the absence of negligence, malfeasance, misfeasance, or nonfeasance.

§ 33.2-1526. Commonwealth Space Flight Fund, Commonwealth Port Fund, Commonwealth Airport Fund, and Commonwealth Mass Transit Fund.

Of the funds becoming part of the Transportation Trust Fund pursuant to subdivision 2 of § 33.2-1524, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund as established in subdivision A 2 of § 58.1-638; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund as established in subdivision A 3 of § 58.1-638; and an aggregate of 14.7 percent shall be set aside as the Commonwealth Mass Transit Fund as established in subdivision A 4 of § 58.1-638. Beginning with the Commonwealth's 2012-2013 fiscal year through the Commonwealth's 2016-2017 fiscal year, each fiscal year from the funds becoming part of the Transportation Trust Fund pursuant to subdivision 2 of § 33.2-1524 the Comptroller shall transfer $9.5 million to the Commonwealth Space Flight Fund as established in subdivision A 3a of § 58.1-638. The remaining funds deposited into or held in the Transportation Trust Fund pursuant to subdivision 2 of § 33.2-1524, together with funds deposited pursuant to subdivisions 1 and 4 of § 33.2-1524, shall be expended for capital improvements, including construction, reconstruction, maintenance, and improvements of highways according to the provisions of subsection C of § 33.2-358 or to secure bonds issued for such purposes, as provided by the Board and the General Assembly.

§ 33.2-1527. Priority Transportation Fund.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Priority Transportation Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. All funds as may be designated in the appropriation act for deposit to the Fund shall be paid into the state treasury and credited to the Fund. Such funds shall include:

1. Beginning with the fiscal year ending June 30, 2000, and for fiscal years thereafter, all revenues that exceed the official forecast, pursuant to § 2.2-1503, for (i) the Highway Maintenance and Operating Fund established in § 33.2-1530 and (ii) the allocation to highway and mass transit improvement projects as set forth in § 33.2-1526, but not including any amounts that are allocated to the Commonwealth Port Fund and the Commonwealth Airport Fund under such section;

2. All revenues deposited into the Fund pursuant to § 58.1-2531;

3. All revenues deposited into the Fund pursuant to subsection E of § 58.1-2289; and

4. Any other such funds as may be transferred, allocated, or appropriated.

All moneys in the Fund shall first be used for debt service payments on bonds or obligations for which the Fund is expressly required for making debt service payments, to the extent needed. The Fund shall be considered a part of the Transportation Trust Fund. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes enumerated in subsection B. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller.

B. The Board shall use the Fund to facilitate the financing of priority transportation projects throughout the Commonwealth. The Board may use the Fund by (i) expending amounts therein on such projects directly; (ii) payment to any authority, locality, commission, or other entity for the purpose of paying the costs thereof; or (iii) using such amounts to support, secure, or leverage financing for such projects. No expenditures from or other use of amounts in the Fund shall be considered in allocating highway maintenance and construction funds under § 33.2-358 or apportioning Transportation Trust Fund funds under § 58.1-638 but shall be in addition thereto. The Board shall use the Fund to facilitate the financing of priority transportation projects as designated by the General Assembly, provided that at the discretion of the Board funds allocated to projects within a transportation district may be allocated among projects within the same transportation district as needed to meet construction cash-flow needs.

C. Notwithstanding any other provision of this section, beginning July 1, 2007, no bonds, obligations, or other evidences of debt (the bonds) that expressly require as a source for debt service payments or for the repayment of such bonds the revenues of the Fund shall be issued or entered into, unless at the time of the issuance the revenues then in the Fund or reasonably anticipated to be deposited into the Fund pursuant to the law then in effect are by themselves sufficient to make 100 percent of the contractually required debt service payments on all such bonds, including any interest related thereto and the retirement of such bonds.

§ 33.2-1528. Concession Payments Account.

A. Concession payments to the Commonwealth deposited into the Transportation Trust Fund pursuant to subdivision 7 of § 33.2-1524 from qualifying transportation facilities developed and/or operated pursuant to the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) shall be held in a separate subaccount to be designated the Concession Payments Account, (the Account) together with all interest, dividends, and appreciation that accrue to the Account and that are not otherwise specifically directed by law or reserved by the Board for other purposes allowed by law.

B. The Board may make allocations from the Account upon such terms and subject to such conditions as the Board deems appropriate to:

1. Pay or finance all or part of the costs of programs or projects, including the costs of planning, operation, maintenance, and improvements incurred in connection with the acquisition and construction of projects, provided that allocations from the Account shall be limited to programs and projects that are reasonably related to or benefit the users of the qualifying transportation facility that was the subject of a concession pursuant to the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.). The priorities of metropolitan planning organizations, planning district commissions, local governments, and transportation corridors shall be considered by the Board in making project allocations from moneys in the Account.

2. Repay funds from the Toll Facilities Revolving Account or the Transportation Partnership Opportunity Fund.

3. Pay the Board's reasonable costs and expenses incurred in the administration and management of the Account.

C. Concession payments to the Commonwealth for a qualifying transportation facility located within the boundaries of a rapid rail project for which a federal Record of Decision has been issued shall be held in a subaccount separate from the Concession Payments Account together with all interest, dividends, and appreciation that accrue to the subaccount. The Board may make allocations from the subaccount as the Board deems appropriate to:

1. Pay or finance all or part of the costs of planning, design, land acquisition, and improvements incurred in connection with the construction of such rapid rail project consistent with the issued federal Record of Decision, as may be revised from time to time; and

2. Upon determination by the Board that sufficient funds are or will be available to meet the schedule for construction of such rapid rail project, pay or finance all or part of the costs of planning, design, land acquisition, and improvements incurred in connection with other highway and public transportation projects within the corridor of the rapid rail project or within the boundaries of the qualifying transportation facility. In the case of highway projects, the Board shall follow an approval process generally in accordance with subsection B of § 33.2-208.

D. The provisions of this section shall be liberally construed to the end that its beneficial purposes may be effectuated. Insofar as this provision is inconsistent with the provisions of any other general, special, or local law, this provision shall be controlling.

E. If any provision of this section or the application thereof to any person or circumstances is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

§ 33.2-1529. Toll Facilities Revolving Account.

A. All definitions of terms in this section shall be as set forth in the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.).

B. Subject to any obligations to existing bondholders, but notwithstanding §§ 2.2-1806 and 58.1-13, funds deposited into the Transportation Trust Fund pursuant to subdivision 3 of § 33.2-1524 shall be held in a separate subaccount to be designated the Toll Facilities Revolving Account, (the Account) together with all interest, dividends, and appreciation that accrue to the Transportation Trust Fund and that are not otherwise specifically directed by law or reserved by the Board in the resolution authorizing issuance of bonds to finance toll facilities. In addition, any funds received from the federal government or any agency or instrumentality thereof that, pursuant to federal law, may be made available, as loans or otherwise, to private persons or entities for transportation purposes, hereinafter referred to as "federal funds," shall be deposited in a segregated subaccount within the Account. Payments received with respect to any loan made from such segregated subaccount pursuant to subdivision D 2 shall also be deposited into such segregated subaccount in the Account.

C. User fees collected in excess of the annual debt service, operations, and maintenance expenses and necessary administrative costs including any obligations to the Account and any other obligations for qualifying facilities with respect to which an agency of the Commonwealth is the responsible public entity shall be deposited and held in the Regional Toll Facilities Revolving Subaccount, (the Regional Account), together with all interest, dividends, and appreciation for use within the metropolitan planning organization region within which the facility exists. Payments received with respect to any loan made from such Regional Account pursuant to subdivision D 3 shall also be deposited into the Regional Account.

D. The Board may make allocations upon such terms and subject to such conditions as the Board deems appropriate from the following funds for the following purposes:

1. From any funds in the Account, exclusive of those in the Regional Account, to pay or finance all or part of the costs, including the cost of planning, operation, maintenance, and improvements, incurred in connection with the acquisition and construction of projects financed in whole or in part as toll facilities or to refinance existing toll facilities, provided that any such funds allocated from the Account for a planned or operating toll facility shall be considered as an advance of funding for which the Account shall be reimbursed;

2. From funds in the segregated subaccount in the Account into which federal funds are deposited in conjunction with the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) and pursuant to the terms of a comprehensive agreement between a responsible public entity and a private operator as provided for in that act:

a. To make a loan to such operator to pay any cost of a qualifying transportation facility, provided that (i) the operator's return on its investment is limited to a reasonable rate and (ii) such loan is limited to a reasonable term; or

b. To pay the Commonwealth's or its agency's portion of costs incurred or to be incurred in accordance with a comprehensive agreement with respect to a transportation facility;

3. From funds in the Regional Account:

a. To pay or finance all or part of the costs, including the cost of planning, operation, maintenance, and improvements incurred in connection with the acquisition and construction of projects financed in whole or in part as toll facilities or to refinance existing toll facilities, provided that (i) allocations from the Regional Account shall be limited to projects located within the same metropolitan planning organization region as the facility that generated the excess revenue and (ii) any such funds allocated from the Regional Account for a planned or operating toll facility shall be considered as an advance of funding for which the Regional Account shall be reimbursed; or

b. To pay the Commonwealth's, its agency's, or its political subdivision's costs incurred or to be incurred in accordance with a comprehensive agreement with respect to a transportation facility within the same metropolitan planning organization region as the facility that generated the excess revenue; and

4. From any funds in the Account or Regional Account, to pay the Board's reasonable costs and expenses incurred in (i) the administration and management of the Account, (ii) its program of financing or refinancing costs of toll facilities, and (iii) the making of loans and paying of costs described in subdivisions 1 and 2.

E. The Board may transfer from the Account to the Transportation Trust Fund for allocation pursuant to subsection C of § 33.2-358 any interest revenues and, subject to applicable federal limitations, federal funds not committed by the Board to the purposes provided for in subsection D.

F. The provisions of this section shall be liberally construed to the end that its beneficial purposes may be effectuated. Insofar as this provision is inconsistent with the provisions of any other general, special, or local law, this provision shall be controlling.

G. If any provision of this section or the application thereof to any person or circumstances is held invalid by a court of competent jurisdiction, invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

Article 6.

Highway Maintenance and Operating Fund.

§ 33.2-1530. Highway Maintenance and Operating Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Highway Maintenance and Operating Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. Any moneys remaining in the Fund at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

The sources of funds for the Highway Maintenance and Operating Fund shall be paid into the state treasury and credited to the Fund and, in addition to all funds appropriated by the General Assembly, includes the following:

1. Revenues generated pursuant to § 33.2-213;

2. Civil penalties collected pursuant to § 33.2-216;

3. Civil penalties collected pursuant to § 33.2-1224;

4. Civil penalties collected pursuant to § 33.2-1229;

5. Permit fees as outlined in § 46.2-652.1;

6. Revenues generated pursuant to § 46.2-702.1;

7. Permit fees pursuant to §§ 46.2-1128, 46.2-1140.1, 46.2-1142.1, 46.2-1143, 46.2-1148, and 46.2-1149.1;

8. Applicable portions of emissions inspection fees from on-road emissions inspectors as designated in § 46.2-1182;

9. Revenues from subsection G of § 58.1-638 and § 58.1-638.3;

10. Revenues from subdivision 2 of § 58.1-815.4;

11. Revenues generated pursuant to subsection B of § 58.1-2249;

12. Revenues as apportioned in subsection E of § 58.1-2289;

13. Revenues as outlined in subsection A of § 58.1-2425; and

14. Taxes and fees pursuant to § 58.1-2701.

CHAPTER 16.

RAIL FUNDS.

§ 33.2-1600. Fund for construction of industrial access railroad tracks.

A. The General Assembly declares it to be in the public interest that access railroad tracks and facilities be constructed to certain industrial commercial sites where rail freight service is or may be needed by new or substantially expanded industry and that financial assistance be provided to areas seeking to furnish rail freight trackage between the normal limits of existing or proposed common carrier railroad tracks and facilities and the actual site of existing or proposed commercial or industrial buildings or facilities. This section is enacted in furtherance of these purposes and is intended to be comparable to the fund for access roads to economic development sites established pursuant to § 33.2-1509.

B. The funding for this program shall be set forth in the appropriation act.

C. The Director of the Department of Rail and Public Transportation shall administer and expend or commit, subject to the approval of the Board, such funds for constructing, reconstructing, or improving industrial access railroad tracks and related facilities. The Director of the Department of Rail and Public Transportation may consult with the Commissioner of Agriculture and Consumer Services and the Chief Executive Officer of the Virginia Economic Development Partnership, or their designated representatives, concerning applications for funds. Funds shall be spent directly by the Director of the Department of Rail and Public Transportation or by reimbursement of the local entities, private or public.

D. Funds may be used to construct, reconstruct, or improve part or all of the necessary tracks and related facilities on public or private property currently used or being developed, existent or prospective, for single industries or industrial subdivisions under firm contract or already constructed, including those subdivisions owned or promoted by railroad companies and others. Applications for funds must be approved by the local governing body.

E. In deciding whether to construct any such access track, the Board shall consider the cost thereof in relation to prospective volume of rail traffic, capital investment, potential employment, and other economic and public benefits. The Board shall adopt procedures to encourage widespread use of the funds, shall limit allocation of funds so that no locality receives more than 50 percent of the funds in any one fiscal year unless there are not sufficient applications prior to May 1 of each year to use the available funds, and shall consider the practices of the Department of Transportation in distributing funds for access roads to economic development sites under § 33.2-1509.

F. Tracks and facilities constructed with such funds shall be the property of the Commonwealth for the useful life of the project as determined by the Director of the Department of Rail and Public Transportation and shall be made available for use by all common carriers using the railway system to which they connect. The landowners or using businesses shall, prior to the commitment of funds by the Director of the Department of Rail and Public Transportation, be contractually committed to the perpetual maintenance of such tracks and facilities so constructed and to the payment of any costs related to the future relocation or removal of such tracks and facilities.

§ 33.2-1601. Rail Enhancement Fund.

A. The General Assembly declares it to be in the public interest that railway preservation and development of railway transportation facilities are an important element of a balanced transportation system of the Commonwealth for freight and passengers and further declares it to be in the public interest that the retention, maintenance, improvement, and development of freight and passenger railways are essential to the Commonwealth's continued economic growth, vitality, and competitiveness in national and world markets.

B. There is hereby created in the state treasury a special nonreverting fund to be known as the Rail Enhancement Fund, hereafter referred to as "the Fund," which shall be considered a special fund within the Transportation Trust Fund. The Fund shall be established on the books of the Comptroller and shall consist of dedications pursuant to § 58.1-1741 and such funds from other sources as may be set forth in the appropriation act and shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely as provided in this section. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the Department of Rail and Public Transportation or the Director's designee.

C. The Director of the Department of Rail and Public Transportation shall administer and expend or commit, subject to the approval of the Board, the Fund for acquiring, leasing, or improving railways or railroad equipment, rolling stock, rights-of-way, or facilities, or assisting other appropriate entities to acquire, lease, or improve railways or railroad equipment, rolling stock, rights-of-way, or facilities, for freight or passenger rail transportation purposes whenever the Board has determined that such acquisition, lease, or improvement is for the common good of a region of the Commonwealth or the Commonwealth as a whole. Funds provided in this section may also be used as matching funds for federal grants to support passenger or freight rail projects.

D. Projects undertaken pursuant to this section shall be limited to those the Board has determined will result in public benefits to a region of the Commonwealth or the Commonwealth as a whole that are equal to or greater than the investment of funds under this section. Such public benefits shall include the impact of the project on traffic congestion and environmental quality and, whenever possible, give due consideration to passenger rail capacity on corridors identified by the Board that have existing or proposed passenger rail service. Such projects shall include a minimum of 30 percent cash or in-kind matching contribution from a private source, which may include a railroad, a regional authority, a local government source, or a combination of such sources.

§ 33.2-1602. Shortline Railway Preservation and Development Fund.

A. For the purposes of this section:

"Fund" means the Shortline Railway Preservation and Development Fund.

"Railway transportation support facilities" means facilities required for the loading, transfer, or additional track capacity to facilitate the shipment of goods by rail other than as provided for in § 33.2-1600 or 33.2-1601.

"Shortline railway" means any Class II or Class III railroad as defined by the U.S. Surface Transportation Board.

B. The General Assembly declares it to be in the public interest that shortline railway preservation and development of railway transportation support facilities are important elements of a balanced transportation system of the Commonwealth for freight and passengers, and further declares it to be in the public interest that the retention, maintenance, and improvement of the shortline railway and development of railway transportation support facilities are essential to the Commonwealth's continued economic growth, vitality, and competitiveness in national and world markets.

C. There is hereby created in the state treasury a special nonreverting fund to be known as the Shortline Railway Preservation and Development Fund. The Fund shall be established on the books of the Comptroller and shall consist of such funds from such sources as shall be set forth in the general appropriation act and shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely as provided in this section. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the Department of Rail and Public Transportation or the Director's designee.

D. To fulfill this purpose, there shall be funding set forth each year in the budget bill and appropriated by the General Assembly in the Rail Assistance Program of the Department of Rail and Public Transportation. These funds shall be used by the Department of Rail and Public Transportation to administer a Shortline Railway Preservation and Development Program for the purposes described in subsection B. Furthermore, the Board shall include an annual allocation for such purpose in its allocation of transportation revenues.

E. The Director of the Department of Rail and Public Transportation shall administer and expend or commit, subject to the approval of the Board, the Fund for acquiring, leasing, or improving shortline railways and the development of railway transportation support facilities or assisting other appropriate entities to acquire, lease, or improve shortline railways and the development of railway transportation purposes whenever the Board has determined that such acquisition, lease, or improvement is for the common good of a region of the Commonwealth or the Commonwealth as a whole. The Director of the Department of Rail and

Public Transportation may consult with other agencies or their designated representatives concerning projects to be undertaken under this section.

F. Tracks and facilities constructed, and property and equipment purchased, with funds under this section shall be the property of the Commonwealth for the useful life of the project, as determined by the Director of the Department of Rail and Public Transportation, and shall be made available for use by all common carriers using the railway system to which they connect under the trackage rights agreements between the parties. Projects undertaken pursuant to this section shall be limited to those of a region of the Commonwealth or the Commonwealth as a whole. Such projects shall include a minimum of 30 percent cash or in-kind matching contribution from a private source, which may include a railroad, a regional authority, private industry, a local government source, or a combination of such sources. No single project shall be allocated more than 50 percent of total available funds.

§ 33.2-1603. Intercity Passenger Rail Operating and Capital Fund.

A. The General Assembly declares it to be in the public interest that developing and continuing intercity passenger rail operations and the development of rail infrastructure, rolling stock, and support facilities to support intercity passenger rail service are important elements of a balanced transportation system in the Commonwealth and further declares it to be in the public interest that the retention, maintenance, improvement, and development of intercity passenger rail-related infrastructure improvements and operations are essential to the Commonwealth's continued economic growth, vitality, and competitiveness in national and world markets.

B. There is hereby created in the state treasury a special nonreverting fund to be known as the Intercity Passenger Rail Operating and Capital Fund, hereafter referred to as "the Fund," which shall be considered a special fund within the Transportation Trust Fund. The Fund shall be established on the books of the Comptroller and shall consist of funds designated pursuant to subdivision A 2 of § 58.1-638.3 and as may be set forth in the appropriation act and by allocation of funds for operations and projects pursuant to this section by the Board in accordance with § 33.2-358. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely as provided in this section. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the Department of Rail and Public Transportation or his designee.

C. The Director of the Department of Rail and Public Transportation or his designee shall administer and expend or commit, subject to the approval of the Board, the Fund to support the cost of operating intercity passenger rail service; acquiring, leasing, or improving railways or railroad equipment, rolling stock, rights-of-way, or facilities; or assisting other appropriate entities to acquire, lease, or improve railways or railroad equipment, rolling stock, rights-of-way, or facilities for intercity passenger rail transportation purposes whenever the Board has determined that such acquisition, lease, or improvement is for the common good of a region of the Commonwealth or the Commonwealth as a whole. Funds provided in this section may also be used as matching funds for federal grants to support intercity passenger rail projects.

D. Capital projects including tracks and facilities constructed and property, equipment, and rolling stock purchased with funds under this section shall be the property of the Commonwealth for the useful life of the project, as determined by the Director of the Department of Rail and Public Transportation, and shall be made available for use by all intercity passenger rail operations and common carriers using the railway system to which they connect under the trackage rights or operating agreements between the parties. Projects undertaken pursuant to this section shall be limited to those of a region of the Commonwealth or the Commonwealth as a whole. Such projects undertaken pursuant to this section shall not require a matching contribution; however, projects proposed with matching funds may receive more favorable consideration. Matching funds may be provided from any source except Commonwealth Transportation Fund revenues.

CHAPTER 17.

TRANSPORTATION DEVELOPMENT AND REVENUE BOND ACT.

§ 33.2-1700. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Commonwealth Transportation Board, or if the Commonwealth Transportation Board is abolished, any board, commission, or officer succeeding to the principal functions thereof or upon whom the powers given by this chapter to the Board shall be given by law.

"Cost of the project," as applied to a project to be acquired by purchase or by condemnation, includes:

1. The purchase price or the amount of the award;

2. The cost of improvements, financing charges, and interest during any period of disuse before completion of improvements;

3. The cost of traffic estimates and of engineering data;

4. The cost of engineering and legal expenses;

5. The cost of plans, specifications and surveys, and estimates of cost and of revenues; and

6. Other expenses necessary or incident to determining the feasibility or practicability of the enterprises, administrative expenses, and such other expenses as may be necessary or incident to the financing authorized in this chapter and the acquisition of the project and the placing of the project in operation.

"Cost of the project," as applied to a project to be constructed, includes:

1. The cost of construction;

2. The cost of all lands, properties, rights, easements, and franchises acquired that are deemed necessary for such construction;

3. The cost of acquiring by purchase or condemnation any ferry that is deemed by the Board to be competitive with any bridge to be constructed;

4. The cost of all machinery and equipment;

5. The cost of financing charges and interest prior to construction, during construction, and for one year after completion of construction;

6. The cost of traffic estimates and of engineering data;

7. The cost of engineering and legal expenses;

8. The cost of plans, specifications and surveys, estimates of cost and of revenues; and

9. Other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expenses, and such other expenses as may be necessary or incident to the financing authorized in this chapter, the construction of the project, the placing of the project in operation, and the condemnation of property necessary for such construction and operation.

"Improvements" means those repairs to, replacements of, additions to, and betterments of a project acquired by purchase or by condemnation as are deemed necessary to place it in a safe and efficient condition for the use of the public, if such repairs, replacements, additions, and betterments are ordered prior to the sale of any bonds for the acquisition of such project.

"Owner" includes all individuals, incorporated companies, partnerships, societies, and associations having any title or interest in any property rights, easements, or franchises authorized to be acquired by this chapter.

"Project" means any one or more of the following:

1. The York River Bridges, extending from a point within Yorktown in York County or within York County across the York River to Gloucester Point or some point in Gloucester County.

2. The Rappahannock River Bridge, extending from Greys Point, or its vicinity, in Middlesex County, across the Rappahannock River to a point in the vicinity of White Stone, in Lancaster County, or at some other feasible point in the general vicinity of the two respective points.

3. The James River Bridge, from a point at or near Jamestown, in James City County, across the James River to a point in Surry County.

4. The James River, Chuckatuck, and Nansemond River Bridges, together with necessary connecting roads, in the Cities of Newport News and Suffolk and the County of Isle of Wight.

5. The Hampton Roads Bridge-Tunnel or Bridge and Tunnel System, extending from a point or points in the Cities of Newport News and Hampton on the northwest shore of Hampton Roads across Hampton Roads to a point or points in the City of Norfolk or Suffolk on the southeast shore of Hampton Roads.

6. Interstate 264, extending from a point in the vicinity of the intersection of Interstate Route 64 and U.S. Route 58 at Norfolk to some feasible point between London Bridge and U.S. Route 60.

7. The Henrico-James River Bridge, extending from a point on the eastern shore of the James River in Henrico County to a point on the western shore, between Falling Creek and Bells Road interchanges of Interstate 95; however, the project shall be deemed to include all property, rights, easements, and franchises relating to this project and deemed necessary or convenient for its operation, including its approaches.

8. The limited access highway between the Newport News/Williamsburg International Airport area and the Newport News downtown area, which generally runs parallel to tracks of the Chesapeake and Ohio Railroad.

9. Transportation improvements in the Dulles Corridor, with an eastern terminus of the East Falls Church Metrorail station at Interstate 66 and a western terminus of Virginia Route 772 in Loudoun County, including without limitation the Dulles Toll Road; the Dulles Access Road; outer roadways adjacent or parallel thereto; mass transit, including rail; bus rapid transit; and capacity-enhancing treatments such as high-occupancy vehicle lanes, high-occupancy toll lanes, interchange improvements, commuter parking lots, and other transportation management strategies.

10. Subject to the limitations and approvals of § 33.2-1712, any other highway for a primary highway transportation improvement district or transportation service district that the Board has agreed to finance under a contract with any such district or any other alternative mechanism for generation of local revenues for specific funding of a project satisfactory to the Board, the financing for which is to be secured by Transportation Trust Fund revenues under any appropriation made by the General Assembly for that purpose and payable first from revenues received under such contract or other local funding source; second, to the extent required, from funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project is located or to the county or counties in which the project is located; and third, to the extent required from other legally available revenues of the Transportation Trust Fund and from any other available source of funds.

11. The U.S. Route 58 Corridor Development Program projects as defined in §§ 33.2-2300 and 33.2-2301.

12. The Northern Virginia Transportation District Program as defined in §§ 33.2-2400 and 33.2-2401.

13. Any program for highways or mass transit or transportation facilities endorsed by the affected localities, which agree that certain distributions of state recordation taxes will be dedicated and used for the payment of any bonds or other obligations, including interest thereon, the proceeds of which were used to pay the cost of the program. Any such program shall be referred to as a "Transportation Improvement Program."

14. Any project designated from time to time by the General Assembly financed in whole or part through the issuance of Commonwealth of Virginia Federal Highway Reimbursement Anticipation Notes.

15. Any project authorized by the General Assembly financed in whole or in part by funds from the Priority Transportation Fund established pursuant to § 33.2-1527 or from the proceeds of bonds whose debt service is paid in whole or in part by funds from such Fund.

16. Any project identified by the Board to be financed in whole or in part through the issuance of Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes.

"Revenues" includes tolls and any other moneys received or pledged by the Board pursuant to this chapter, including legally available Transportation Trust Fund revenues and any federal highway reimbursements and any other federal highway assistance received by the Commonwealth.

"Toll project" means a project financed in whole or in part through the issuance of revenue bonds that are secured by toll revenues generated by the project.

"Undertaking" means all of the projects authorized to be acquired or constructed under this chapter.

§ 33.2-1701. General powers of Commonwealth Transportation Board.

The Board may, subject to the provisions of this chapter:

1. Acquire by purchase or by condemnation, construct, improve, operate, and maintain any one or more of the projects mentioned and included in the undertaking as defined in § 33.2-1700;

2. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Toll Revenue Bonds," payable from earnings and from any other available sources of funds, to pay the cost of such projects;

3. Subject to the limitations and approvals of § 33.2-1712, issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Contract Revenue Bonds," secured

by Transportation Trust Fund revenues under a payment agreement between the Board and the Treasury Board, subject to their appropriation by the General Assembly and payable first from revenues received pursuant to contracts with a primary highway transportation improvement district or transportation service district or other local revenue sources for which specific funding of any such bonds may be authorized by law; second, to the extent required, from funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project to be financed is located or to the county or counties in which the project to be financed is located; and third, to the extent required, from other legally available revenues of the Transportation Trust Fund and from any other available source of funds;

4. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Revenue Bonds," secured (i) by revenues received from the U.S. Route 58 Corridor Development Fund, subject to their appropriation by the General Assembly; (ii) to the extent required, from revenues legally available from the Transportation Trust Fund; and (iii) to the extent required, from any other legally available funds that have been appropriated by the General Assembly;

5. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Revenue Bonds," secured, subject to their appropriation by the General Assembly, (i) first from revenues received from the Northern Virginia Transportation District Fund; (ii) to the extent required, from funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project to be financed is located or to the city or county in which the project to be financed is located; (iii) to the extent required, from legally available revenues of the Transportation Trust Fund; and (iv) from such other funds that may be appropriated by the General Assembly;

6. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Program Revenue Bonds," secured, subject to their appropriation by the General Assembly, (i) first from any revenues received from any Set-aside Fund established by the General Assembly pursuant to § 58.1-816.1; (ii) to the extent required, from revenues received pursuant to any contract with a locality or any alternative mechanism for generation of local revenues for specific funding of a project satisfactory to the Board; (iii) to the extent required, from funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project to be financed is located or to the city or county in which the project to be financed is located; (iv) to the extent required, from legally available revenues of the Transportation Trust Fund; and (v) from such other funds that may be appropriated by the General Assembly. No bonds for any project shall be issued under the authority of this subdivision unless such project is specifically included in a bill or resolution passed by the General Assembly;

7. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Program Revenue Bonds," secured, subject to their appropriation by the General Assembly, (i) first from any revenues received from the Commonwealth Transit Capital Fund established by the General Assembly pursuant to subdivision A 4 c of § 58.1-638; (ii) to the extent required, from legally available revenues of the Transportation Trust Fund; and (iii) from such other funds that may be appropriated by the General Assembly. No bonds for any project shall be issued under the authority of this subdivision unless such project is specifically included in a bill or resolution passed by the General Assembly;

8. Issue revenue bonds of the Commonwealth from time to time to be known and designated as "Commonwealth of Virginia Federal Highway Reimbursement Anticipation Notes," secured, subject to their appropriation by the General Assembly, (i) first from any federal highway reimbursements and any other federal highway assistance received from time to time by the Commonwealth; (ii) then, at the discretion of the Board, to the extent required, from legally available revenues of the Transportation Trust Fund; and (iii) then from such other funds, if any, that are designated by the General Assembly for such purpose;

9. Issue revenue bonds of the Commonwealth from time to time to be known and designated as "Commonwealth of Virginia Credit Assistance Revenue Bonds," secured, subject to their appropriation by the General Assembly, solely from revenues with respect to or generated by the project being financed thereby and any tolls or other revenues pledged by the Board as security therefor and in accordance with the applicable federal credit assistance authorized with respect to such project by the U.S. Department of Transportation;

10. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Capital Projects Revenue Bonds," secured, subject to their appropriation by the General Assembly, (i) from the revenues deposited into the Priority Transportation Fund established pursuant to § 33.2-1527; (ii) to the extent required, from revenues legally available from the Transportation Trust Fund; and (iii) to the extent required, from any other legally available funds;

11. Issue grant anticipation notes of the Commonwealth from time to time to be known and designated as "Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes," secured, subject to their appropriation by the General Assembly, (i) first from the project-specific reimbursements pursuant to § 33.2-1520; (ii) then, at the discretion of the Board, to the extent required, from legally available revenues of the Transportation Trust Fund; and (iii) then from such other funds, if any, that are designated by the General Assembly for such purpose;

12. Fix and collect tolls and other charges for the use of such projects or to refinance the cost of such projects;

13. Construct grade separations at intersections of any projects with public highways, railways, or streets and adjust the lines and grades thereof so as to accommodate the same to the design of such grade separations, the cost of such grade separations and any damage incurred in adjusting the lines and grades of such highways, railways, or streets to be ascertained and paid by the Board as a part of the cost of the project;

14. Vacate or change the location of any portion of any public highway and reconstruct the same at such new location as the Board deems most favorable for the project and of substantially the same type and in as good condition as the original highway, the cost of such reconstruction and any damage incurred in vacating or changing the location thereof to be ascertained and paid by the Board as a part of the cost of the project. Any public highway vacated or relocated by the Board shall be vacated or relocated in the manner provided by law for the vacation or relocation of public highways, and any damages awarded on account thereof may be paid by the Board as a part of the cost of the project;

15. Make reasonable regulations for the installation, construction, maintenance, repair, renewal, and relocation of pipes, mains, sewers, conduits, cables, wires, towers, poles, and other equipment and appliances, referred to in this subdivision as "public utility facilities," of the Commonwealth and of any locality, political subdivision, public utility, or public service corporation owning or operating the same in, on, along, over, or under the project. Whenever the Board determines that it is necessary that any such public utility facilities should be relocated or removed, the Commonwealth or such locality, political subdivision, public utility, or public service corporation shall relocate or remove the same in accordance with the order of the Board. The cost and expense of such relocation or removal, including the cost of installing such public utility facilities in a new location or locations, the cost of any lands or any rights or interests in lands, and any other rights acquired to accomplish such relocation or removal, shall be ascertained by the Board.

On any toll project, the Board shall pay the cost and expense of relocation or removal as a part of the cost of the project for those public utility facilities owned or operated by the Commonwealth or such locality, political subdivision, public utility, or public service corporation. On all other projects under this chapter, the Board shall pay the cost and expense of relocation or removal as a part of the cost of the project for those public utility facilities owned or operated by the Commonwealth or such locality or political subdivision. The Commonwealth or such locality, political subdivision, public utility, or public service corporation may maintain and operate such public utility facilities with the necessary appurtenances in the new location for as long a period and upon the same terms and conditions as it had the right to maintain and operate such public utility facilities in their former location;

16. Acquire by the exercise of the power of eminent domain any lands, property, rights, rights-of-way, franchises, easements, and other property, including public lands, parks, playgrounds, reservations, highways, or parkways, or parts thereof or rights therein, of any locality or political subdivision, deemed necessary or convenient for the construction or the efficient operation of the project or necessary in the restoration, replacement, or relocation of public or private property damaged or destroyed.

The cost of such projects shall be paid solely from the proceeds of Commonwealth of Virginia Toll or Transportation Contract Revenue Bonds or a combination thereof or from such proceeds and from any grant or contribution that may be made thereto pursuant to the provisions of this chapter;

17. Notwithstanding any provision of this chapter to the contrary, the Board shall be authorized to exercise the powers conferred in this chapter, in addition to its general powers to acquire rights-of-way and to construct, operate, and maintain state highways, with respect to any project that the General Assembly has authorized or may hereafter authorize to be financed in whole or in part through the issuance of bonds of the Commonwealth pursuant to the provisions of Article X, Section 9 (c) of the Constitution of Virginia; and

18. Enter into any agreements or take such other actions as the Board determines in connection with applying for or obtaining any federal credit assistance, including without limitation loan guarantees and lines of credit, pursuant to authorization from the U.S. Department of Transportation with respect to any project included in the Commonwealth's long-range transportation plan and the approved State Transportation Improvement Program.

§ 33.2-1702. Acquisition and construction of projects.

The Board shall acquire or construct, under the provisions of this chapter, each of the projects included in the undertaking at the earliest dates deemed by the Board to be feasible for the acquisition or construction of each project and its financing under this chapter.

§ 33.2-1703. Purchase of projects.

The Board may acquire by purchase, whenever it deems such purchase expedient, any of the projects set forth in the definition of "project" in § 33.2-1700, upon such terms and at such prices as may be reasonable and can be agreed upon between the Board and the owner thereof, title thereto to be taken in the name of the Commonwealth. The Board shall issue revenue bonds of the Commonwealth as provided in this chapter to pay the cost of such acquisition.

§ 33.2-1704. Condemnation of projects and property.

A. Whenever a reasonable price cannot be agreed upon or whenever the owner is legally incapacitated, absent, unable to convey valid title, or unknown, the Board may acquire by condemnation any project contemplated by § 33.2-1703 or interest therein and any lands, rights, easements, franchises, and other property deemed necessary or convenient for the improvement or the efficient operation of any project acquired or constructed under this chapter, or for the purpose of constructing any project or portion thereof pursuant to this chapter, or for securing a right-of-way leading to any such project or its approaches, in the manner provided in this chapter. Such condemnation proceedings shall be conducted and the compensation to be paid shall be ascertained and paid in the manner provided by law with reference to the condemnation of property by the Board for state highway purposes.

B. Title to any property condemned by the Board shall be taken in the name of the Commonwealth. The Commonwealth shall be under no obligation to accept and pay for any property condemned or any cost incidental to any condemnation proceedings and shall not pay for the same except from the funds provided by this chapter; and in any condemnation proceedings, the court having jurisdiction of the suit, action, or proceeding may make such orders as may be just to the Commonwealth and to the owners of the property to be condemned and may require an undertaking or other security to secure such owners against any loss or damage to be sustained by reason of the failure of the Commonwealth to accept and pay for the property, but such undertaking or security shall impose no liability upon the Commonwealth, except such as may be paid from the funds provided under the authority of this chapter, provided that condemnation shall not lie in any case when the Commonwealth, in granting a franchise to any project named in this chapter, has stipulated the terms upon which it may acquire such project.

§ 33.2-1705. Improvement of projects acquired.

The Board, at or before the time any such project is acquired by purchase or by condemnation, shall determine what repairs, replacements, additions, or betterments will be necessary to place the project in safe and efficient condition for the use of the public and shall cause an estimate of the cost of such improvement to be made. The Board shall authorize such improvements before the sale of any revenue bonds for the acquisition of such project, and the cost of such improvements shall be paid for out of the proceeds of such bonds.

§ 33.2-1706. Construction of projects.

The Board may construct, whenever it deems such construction expedient, any of the projects set forth in the definition of "project" in § 33.2-1700. The Board may purchase within the Commonwealth, solely from

funds provided under the authority of this chapter, such lands, structures, rights-of-way, franchises, easements, and other interests in lands, including lands under water and riparian rights of any person, partnership, association, railroad or other corporation, or municipality or political subdivision, deemed necessary for the construction of any project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof and may take title thereto in the name of the Commonwealth. The Commonwealth hereby consents to the use of all lands lying under water that are within the Commonwealth and are necessary for the construction and operation of any project and the approaches and appurtenances thereto that may be constructed under the provisions of this chapter. All public or private property damaged or destroyed in carrying out the powers granted hereunder shall be restored or repaired and placed in the original condition, as nearly as practicable, or adequate compensation made therefor, out of funds provided under the authority of this chapter.

§ 33.2-1707. Highway connections.

Upon the letting of a contract for the construction of a project under the provisions of this chapter, the Board shall proceed with the construction of any highways that may be necessary to connect the project with state highways in the Commonwealth and to complete the construction of the connecting highways on or before the date the project is opened for traffic.

§ 33.2-1708. Revenue bonds.

The Board may provide by resolution, at one time or from time to time, for the issuance of revenue bonds, notes, or other revenue obligations of the Commonwealth for the purpose of paying all or any part of the cost, as defined in § 33.2-1700, of any one or more projects, as defined in § 33.2-1700. The principal or purchase price of, and redemption premium, if any, and interest on such obligations shall be payable solely from the special funds herein provided for such payment. For the purposes of this section, "special funds" includes any funds established for Commonwealth of Virginia Toll Revenue Bonds, Commonwealth of Virginia Transportation Contract Revenue Bonds, Commonwealth of Virginia Transportation Revenue Bonds, Commonwealth of Virginia Federal Highway Reimbursement Anticipation Notes, or Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes.

§ 33.2-1709. Credit of Commonwealth not pledged.

A. Commonwealth of Virginia Toll Revenue Bonds issued under the provisions of this chapter shall not be deemed to constitute a debt of the Commonwealth or a pledge of the full faith and credit of the Commonwealth, but such bonds shall be payable solely from the funds provided therefor from tolls and revenues pursuant to this chapter, from bond proceeds or earnings thereon, and from any other available sources of funds. All such bonds shall state on their face that the Commonwealth is not obligated to pay the same or the interest thereon except from the special fund provided therefor from tolls and revenues under this chapter, from bond proceeds or earnings thereon, and from any other available sources of funds, and that the full faith and credit of the Commonwealth are not pledged to the payment of the principal or interest of such bonds. The issuance of such revenue bonds under the provisions of this chapter shall not directly or indirectly or contingently obligate the Commonwealth to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, other than appropriate available funds derived as revenues from tolls and charges under this chapter or derived from bond proceeds or earnings thereon and from any other available sources of funds.

B. Commonwealth of Virginia Transportation Contract Revenue Bonds issued under the provisions of this chapter shall not be deemed to constitute a debt of the Commonwealth or a pledge of the full faith and credit of the Commonwealth, but such bonds shall be payable solely from the funds provided therefor pursuant to this chapter (i) from revenues received pursuant to contracts with a primary highway transportation district or transportation service district or any other alternative mechanism for generation of local revenues for specific funding of a project satisfactory to the Board; (ii) to the extent required, from funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project to be financed is located or to the county or counties in which such project is located; (iii) from bond proceeds or earnings thereon; (iv) to the extent required, from other legally available revenues of the Transportation Trust Fund; and (v) from any other available source of funds. All such bonds shall state on their face that the Commonwealth is not obligated to pay the same or the interest thereon except from revenues

in clauses (i) and (iii) and that the full faith and credit of the Commonwealth are not pledged to the payment of the principal and interest of such bonds. The issuance of such revenue bonds under the provisions of this chapter shall not directly or indirectly or contingently obligate the Commonwealth to levy or to pledge any form of taxation whatever or to make any appropriation for their payment, other than to appropriate available funds derived as revenues under this chapter from the sources set forth in clauses (i) and (iii). Nothing in this chapter shall be construed to obligate the General Assembly to make any appropriation of the funds set forth in clause (ii) or (iv) for payment of such bonds.

C. Commonwealth of Virginia Transportation Revenue Bonds issued under the provisions of this chapter shall not be deemed to constitute a debt of the Commonwealth or a pledge of the full faith and credit of the Commonwealth, but such bonds shall be payable solely from the funds provided therefor pursuant to this chapter (i) from revenues received from the U.S. Route 58 Corridor Development Fund established pursuant to § 33.2-2300, subject to their appropriation by the General Assembly; (ii) to the extent required, from revenues legally available from the Transportation Trust Fund; and (iii) to the extent required, from any other legally available funds that may be appropriated by the General Assembly.

D. Commonwealth of Virginia Transportation Revenue Bonds issued under this chapter for Category 1 projects as provided in subdivision 12 of the definition of "project" in § 33.2-1700 shall not be deemed to constitute a debt of the Commonwealth or a pledge of the full faith and credit of the Commonwealth. Such bonds shall be payable solely, subject to their appropriation by the General Assembly, (i) first from revenues received from the Northern Virginia Transportation District Fund established pursuant to § 33.2-2400; (ii) to the extent required, from funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project to be financed is located or to the city or county in which the project to be financed is located; (iii) to the extent required, from legally available revenues of the Transportation Trust Fund; and (iv) from such other funds that may be appropriated by the General Assembly.

E. Commonwealth of Virginia Transportation Program Revenue Bonds issued under this chapter for projects defined in subdivision 13 of the definition of "project" in § 33.2-1700 shall not be deemed to constitute a debt of the Commonwealth or a pledge of the full faith and credit of the Commonwealth. Such bonds shall be payable solely, subject to their appropriation by the General Assembly, (i) first from any revenues received from any Set-aside Fund established by the General Assembly pursuant to § 58.1-816.1; (ii) to the extent required, from revenues received pursuant to any contract with a locality or any alternative mechanism for generation of local revenues for specific funding of a project satisfactory to the Board; (iii) to the extent required, from funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project to be financed is located or to the city or county in which the project to be financed is located; (iv) to the extent required, from legally available revenues from the Transportation Trust Fund; and (v) from such other funds that may be appropriated by the General Assembly.

F. Commonwealth of Virginia Federal Highway Reimbursement Anticipation Notes issued under this chapter shall not be deemed to constitute a debt of the Commonwealth or a pledge of the full faith and credit of the Commonwealth, but such obligations shall be payable solely, subject to appropriation by the General Assembly, (i) first from any federal highway reimbursements and any other federal highway assistance received by the Commonwealth; (ii) then, at the discretion of the Board, to the extent required, from legally available revenues of the Transportation Trust Fund; and (iii) then, from such other funds, if any, that are designated by the General Assembly for such purpose.

G. Commonwealth of Virginia Transportation Credit Assistance Revenue Bonds issued under the provisions of this chapter shall not be deemed to constitute a debt of the Commonwealth or a pledge of the full faith and credit of the Commonwealth, but such obligations shall be payable solely, subject to appropriation by the General Assembly, from revenues with respect to or generated by the project being financed thereby and any tolls or other revenues pledged by the Board as security therefor and in accordance with the applicable federal credit assistance authorized with respect to such project by the U.S. Department of Transportation.

H. Commonwealth of Virginia Transportation Capital Projects Revenue Bonds issued under the provisions of this chapter for projects as provided in subdivision 15 of the definition of "project" in § 33.2-1700 shall not be deemed to constitute a debt of the Commonwealth or a pledge of the full faith and credit of the Commonwealth, but such bonds shall be payable solely, subject to their appropriation by the General Assembly, (i) from the revenues deposited into the Priority Transportation Fund established pursuant to § 33.2-1527; (ii) to the extent required, from revenues legally available from the Transportation Trust Fund; and (iii) to the extent required, from any other legally available funds.

I. Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes issued under the provisions of Article 4 (§ 33.2-1511 et seq.) of Chapter 15 and this chapter shall not be deemed to constitute a debt of the Commonwealth or a pledge of the full faith and credit of the Commonwealth, but such notes shall be payable solely, subject to their appropriation by the General Assembly, (i) first from the project-specific reimbursements pursuant to § 33.2-1520; (ii) then, at the discretion of the Board, to the extent required, from legally available revenues of the Transportation Trust Fund; and (iii) then from such other funds, if any, that are designated by the General Assembly for such purpose.

§ 33.2-1710. Form and terms of bonds.

The bonds of such issue shall be dated, shall bear interest at such rate or rates, and shall mature at such time or times, not exceeding 40 years from their date or dates, as may be determined by the Board or by formula or method established by resolution of the Board, and may be made redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the bonds. The principal or purchase price of and redemption premium, if any, and interest on such bonds may be made payable in any lawful medium. The payments of principal and interest may be uniform in amount over the life of the bond; however, such uniformity shall not be a prerequisite to the issuance of such bonds. The Board shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at any bank or trust company within or without the Commonwealth. The bonds shall be signed by the chairman or vice-chairman of the Board, and the official seal of the Board shall be affixed thereto and attested by the secretary or assistant secretary of the Board, and any coupons attached thereto shall bear the facsimile signatures of the chairman or vice-chairman of the Board. When any officer whose signature appears on the bonds or coupons ceases to be such officer before the delivery of such bonds, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery. All revenue bonds issued under the provisions of this chapter shall have and are hereby declared to have, as between successive holders, all the qualities and incidents of negotiable instruments under the negotiable instruments law of the Commonwealth. Such bonds and the income thereof shall be exempt from all taxation within the Commonwealth. The bonds may be issued in coupon or in registered form, or both, as the Board may determine, and provision may be made for the registration of any coupon bond as to principal alone and also as to both principal and interest and for the reconversion of any bonds registered as to both principal and interest into coupon bonds. Prior to the preparation of definite bonds, the Board, under like restrictions, may issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. The Board may also provide for the replacement of any bond that is mutilated, destroyed, or lost.

§ 33.2-1711. No other prerequisites to issue of bonds.

Such revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things that are specified and required by this chapter.

§ 33.2-1712. Limitations and approvals for certain revenue bonds.

No bonds payable from the Transportation Trust Fund revenues under a payment agreement between the Board and the Treasury Board and payable first from revenues of that Fund received pursuant to contracts with a primary highway transportation improvement district or a transportation service district shall be issued unless specifically included in a bill or resolution passed by the General Assembly. The Treasury Board is designated the sales and paying agent of the Board with respect to such bonds.

§ 33.2-1713. Sale of bonds; bonds as legal investments.

The Board may sell such bonds in such manner and for such price as it may determine to be for the best interests of the Commonwealth, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than the maximum annual percentage rate approved by the Commonwealth Treasury Board with respect to such obligations in accordance with § 2.2-2416.

All bonds issued pursuant to the authority of this chapter are hereby made securities in which all public officers and bodies of the Commonwealth and all political subdivisions thereof; all insurance companies and associations, all national banks and trust companies, and all savings institutions, including savings and loan associations, in the Commonwealth; and all executors, administrators, trustees, and other fiduciaries, both individual or corporate, may properly and legally invest funds within their control.

§ 33.2-1714. Use of proceeds of sale of bonds.

The proceeds of such bonds shall be used solely for the payment of the cost of the project for which they are issued and shall be disbursed by the Board under such restrictions, if any, as the Board may provide. If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than the cost of the project on account of which such bonds are issued, additional bonds may in like manner be issued to provide the amount of such deficit and unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust indenture pursuant to § 33.2-1717 shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same project. If the proceeds of bonds issued for any project exceeds the cost thereof, the surplus shall be paid into the fund provided in this chapter for the payment of principal and interest of such bonds.

§ 33.2-1715. Financing two or more projects together.

The Board may, in its discretion, couple or unite into one unit for financing purposes any two or more such projects, whether acquired by purchase or condemnation or constructed, and revenue bonds of a single issue may be issued for the purpose of paying the cost of any one or more projects, unless otherwise restricted by statute.

§ 33.2-1716. All moneys to be trust funds.

All moneys received pursuant to the authority of this chapter, whether as proceeds from the sale of revenue bonds, as grants or other contributions, or as tolls and revenues, shall be held and applied solely as provided in this chapter. The Board shall, in the resolution authorizing the issuance of bonds or in the trust indenture, provide for the payment of the proceeds of the sale of the bonds and the tolls and revenues to be received into the state treasury and carried on the books of the Comptroller in a special account and may provide for the turning over, transfer, or paying over of such funds from the state treasury to any officer, agency, bank, or trust company who shall act as trustee of such funds and hold and apply the same to the purposes of this chapter, subject to such regulations as this chapter and such resolution or trust indenture may provide.

Disbursements and payments of moneys so paid into the state treasury shall be made by the State Treasurer upon warrants of the State Comptroller that he shall issue upon vouchers signed by such person or persons as shall be designated by the Board for such purpose.

§ 33.2-1717. Trust indenture.

In the discretion of the Board, each or any issue of revenue bonds may be secured by a trust indenture by and between the Board and a corporate trustee, which may be any trust company or bank having trust powers within or outside of the Commonwealth. Such trust indenture may pledge tolls and revenues to be received, but no such trust indenture shall convey or mortgage any project or any part thereof. Either the resolution providing for the issuance of revenue bonds or such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Board in relation to the acquisition, construction, improvement, maintenance, operation, repair, and insurance of the projects and the custody, safeguarding, and application of all moneys. Such resolution or trust indenture may also provide that the project shall be acquired, or acquired and improved, or constructed, and paid for under the supervision and approval of consulting engineers employed or designated by the Board and satisfactory to the original purchasers of the bonds issued therefor and may also require that the security given by contractors and by any

depository of the proceeds of the bonds or revenues of the project or other moneys pertaining thereto be satisfactory to such purchasers. Any bank or trust company within or without the Commonwealth may act as such depository and furnish such indemnifying bonds or pledge such securities as may be required by the Board. Such indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. In addition to the foregoing, such trust indenture may contain such other provisions as the Board may deem reasonable and proper for the security of the bondholders. Except as otherwise provided in this chapter, the Board may provide, by resolution or by such trust indenture, that after the payment of the proceeds of the sale of the bonds and the revenues of the project into the state treasury the Board will immediately transfer or pay same over to such officer, board, or depository as it may determine for the custody thereof and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation, and repairs of the project affected by such indenture.

§ 33.2-1718. Revenues.

The Board shall fix and revise as may be necessary tolls for the use of each project for which bonds are issued or proposed to be issued under the provisions of this chapter and shall charge and collect the same and may contract with any person, partnership, association, or corporation desiring the use of such project, approaches, and appurtenances, and any part thereof, for placing thereon water, gas, or oil pipelines or telephone, telegraph, electric light, or power lines, or for any other purpose, and may fix the terms, conditions, and rates and charges for such use. Such tolls shall be so fixed and adjusted, in respect of the aggregate of tolls from the project on account of which a single issue of bonds is issued under this chapter, as to provide a fund sufficient with other revenues of such project, if any, to pay (i) the cost of maintaining, repairing, and operating such project unless such cost shall be otherwise provided for and (ii) such bonds and the interest thereon as the same shall become due. Such tolls shall not be subject to supervision or regulation by any other state commission, board, bureau, or agency. Except for those persons exempted by § 33.2-613, it shall be unlawful for the Department or any Department employee to give or permit free passage over any project set forth in the definition of "project" in § 33.2-1700 that has been secured through the issuance of revenue bonds and which bonds are payable from the revenues of such project. Every vehicle and person shall pay the same toll as others similarly situated. Except as provided in § 33.2-613, the provisions in this section shall apply with full force and effect to vehicles and employees of the state government and governments of counties, cities, and towns or other political subdivisions and to vehicles and persons of all other categories and descriptions, public, private, eleemosynary, or otherwise.

§ 33.2-1719. Reserve funds and appropriations.

A. In connection with the Commonwealth of Virginia Transportation Contract Revenue Bonds, the Board may create and establish one or more special funds (reserve funds) and shall pay into each such reserve fund from bond proceeds and any moneys appropriated and made available by the Commonwealth for the purpose of such fund and from any other moneys that may be made available to the Board for the purpose of such fund from any other source or sources. All moneys held in any reserve fund shall be used as required solely for the payment of the principal and interest of Commonwealth of Virginia Transportation Contract Revenue Bonds.

B. In order to further ensure maintenance of the reserve fund, the Commissioner of Highways shall annually, on or before December 1, make and deliver to the Governor and Director of the Department of Planning and Budget his certificate stating the sum, if any, required to restore each such reserve fund to the minimum reserve fund requirement for such fund as may be established by the Board. Within five days after the beginning of each regular session of the General Assembly, the Governor shall submit to the presiding officer of each house printed copies of a budget including the sum, if any, required to restore each such reserve fund to the minimum reserve fund requirement for such fund. All sums appropriated by the General Assembly for such restoration and paid shall be deposited by the Board in the applicable reserve fund and shall be deducted from amounts otherwise allocable pursuant to the highway allocation formula as provided by law to the highway construction district in which the project is located or to the county or counties in which the project financed is located.

§ 33.2-1720. Sinking fund.

The tolls and all other revenues derived from the project for which a single issue of bonds is issued, except such part thereof as may be required to pay the cost of maintaining, repairing, and operating such project and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust indenture, shall be set aside at such regular intervals as may be provided in such resolution or such trust indenture, in a sinking fund that is hereby pledged to and charged with the payment of (i) the interest upon such bonds as such interest shall fall due, (ii) the principal of the bonds as the same shall fall due, (iii) the necessary charges of paying agents for paying principal and interest, and (iv) any premium upon bonds retired by call or purchase as provided in this section.

The use and disposition of such sinking fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the bonds or in the trust indenture but, except as may otherwise be provided in such resolution or trust indenture, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another. Subject to the provisions of the resolution authorizing the issuance of the bonds or of the trust indenture, any moneys in such sinking fund in excess of an amount equal to one year's interest on all bonds then outstanding may be applied to the purchase or redemption of bonds. All bonds so purchased or redeemed shall forthwith be cancelled and shall not again be issued.

§ 33.2-1721. Cessation of tolls.

When the particular revenue bonds issued for any project and the interest thereon have been paid, or a sufficient amount has been provided for their payment and continues to be held for that purpose, the Board shall cease to charge tolls for the use of such project and thereafter such project shall be free; however, the Board may thereafter charge tolls for the use of any such project when tolls are required for maintaining, repairing, operating, improving, and reconstructing such project; when such tolls have been or are pledged by the Board to the payment of revenue bonds issued under the provisions of this chapter for another project on approval of the General Assembly; or when such tolls are designated by the Board to be deposited into the Transportation Trust Fund. However, any such pledge of tolls of a project to the payment of bonds issued for another project shall not be effective until the principal and interest of the bonds issued for the first mentioned project has been paid or provision made for their payment.

The provisions of this section shall also apply to tolls on projects constructed pursuant to (i) the Chesapeake Bay Bridge and Tunnel District and Commission established in Chapter 22 (§ 33.2-2200 et seq.) and (ii) the Richmond Metropolitan Authority established in Chapter 29 (§ 33.2-2900 et seq.), provided their governing bodies have acted as set forth in subdivision 3 of § 33.2-1524.

§ 33.2-1722. Use of certain funds by Board.

The Board may, in its discretion, use any part of funds available for the construction of state highways in any highway construction district in which any project authorized for toll revenue bond financing by the Board as described in § 33.2-1700 or by the Richmond Metropolitan Authority as established in Chapter 29 (§ 33.2-2900 et seq.) is wholly or partly located to aid in the payment of the cost of such projects and for the payment, purchase, or redemption of revenue bonds issued in connection with any such project, or in connection with any such project and any one or more other projects. The Board may also, in its discretion, use any part of funds available for the maintenance of state highways, in any highway construction district in which any such project is wholly or partly located, to provide for the operation, maintenance, and repair of any such project and for the payment of interest on revenue bonds issued in connection with any such project, or in connection with any such project and any one or more other projects. In addition, the Board may, in its discretion, use funds under the terms of this section for the emergency operation, maintenance, and repair of the project of the Chesapeake Bay Bridge and Tunnel District and Commission as established in Chapter 22 (§ 33.2-2200 et seq.) in the event of damage to the bridge under a repayment agreement approved by the bond trustee and may also pay to the Chesapeake Bay Bridge and Tunnel Commission, for aid in the maintenance of the project, the same amounts authorized by § 33.2-319 for payments for maintenance to certain towns and cities.

If the Board uses any part of the fund available to itself for the construction of highways in the primary state highway system without reference to highway construction districts, commonly called the "gap fund," for any purpose permitted by this section, it shall not expend in excess of three-eighths of the amount of such fund, including other amounts of such fund that may be expended in the three districts in which such projects are

located, provided that in no case shall any of the funds of any highway construction district other than those in which the projects are located be used for the purposes of this chapter.

§ 33.2-1723. Contributions.

The Board, in addition to the revenues that may be received from the sale of revenue bonds and from the collection of tolls and other revenues derived under the provisions of this chapter, may receive and accept from any federal agency or other public or private body contributions of either money or property or other things of value, to be held, used, and applied for the purposes provided in this chapter.

§ 33.2-1724. Remedies of bondholders and trustee.

Any holder of revenue bonds issued under the provisions of this chapter or any of the coupons attached thereto and the trustee under the trust indenture, if any, except to the extent the rights herein given may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may, either at law or in equity, by suit, action, mandamus, or other proceedings protect and enforce any and all rights under the laws of the United States or of the Commonwealth or granted hereunder or under such resolution or trust indenture and may enforce and compel performance of all duties required by this chapter, or by such resolution or trust indenture, to be performed by the Commonwealth or by the Board, or any officer thereof, including the fixing, charging, and collecting of tolls for the use of such project.

§ 33.2-1725. Competing bridges, ferries, and tunnels.

No bridge or tunnel other than those specified in § 33.2-1700 for the use of the traveling public shall be constructed and operated by the Commonwealth or by any county, municipal corporation, or political subdivision of the Commonwealth, or by any agency or instrumentality, partnership, association, or corporation, within 10 miles of any terminus of any project acquired or constructed under the provisions of this chapter, and no franchise shall be granted for the operation of a ferry within 10 miles of any projects for the acquisition or construction of which revenue bonds have been authorized under this chapter, except under a written permit granted by the Board, which is hereby exclusively authorized to grant such permits under the terms and conditions of this chapter. No such permit shall be granted by the Board until it ascertains by an investigation, including a hearing upon such notice and under such rules as the Board may prescribe, that there is an urgent public need for the operation of such bridge, tunnel, or ferry and that its operation will not affect the revenues of any such project of the Commonwealth so as to impair the security of any revenue bonds issued for the acquisition or construction of such project.

The distance of 10 miles specified in this section shall be measured in a straight line between the nearest points of such projects. However, nothing in this chapter shall apply to an existing ferry route, temporarily discontinued, if the ferry was established prior to 1940.

§ 33.2-1726. Incidental powers of the Board.

The Board may make and enter into all contracts or agreements necessary or incidental to the execution of its powers under this chapter and may employ engineering, architectural, and construction experts and inspectors, brokers, and such other employees as may be deemed necessary, who shall be paid such compensation as may be provided in accordance with law. All such compensation and all expenses incurred in carrying out the provisions of this chapter shall be paid solely from funds provided under the authority of this chapter, and no liability or obligation shall be incurred pursuant to this chapter beyond the extent to which money has been provided under the authority of this chapter. The Board may exercise any powers that are necessary or convenient for the execution of its powers under this chapter.

The Board shall maintain and keep in good condition and repair, or cause to be maintained and kept in good condition and repair, the projects authorized under this chapter, when acquired or constructed and opened to traffic, including any project or part thereof that may include portions of existing streets or roads within a county, municipality, or other political subdivision.

The Board is authorized and empowered to establish regulations for the use of any one or more of the projects defined in § 33.2-1700, as amended, including reasonable regulations relating to (i) maximum and minimum speed limits applicable to motor vehicles using such project, any other provision of law to the contrary notwithstanding; (ii) the types, kinds, and sizes of vehicles that may use such projects; (iii) the nature, size, type of materials, or substances that shall not be transported over such project; and (iv) such other matters as may be necessary or expedient in the interest of public safety with respect to the use of such project,

provided that as to the project authorized under the terms of subdivision 5 of the definition of "project" in § 33.2-1700, the provisions of clauses (i), (ii), (iii), and (iv) shall not apply to existing streets within a municipality and embraced by such project, except as may be otherwise agreed upon by the Board and the municipality.

The projects acquired or constructed under this chapter may be policed in whole or in part by State Police officers even though all or some portions of any such projects lie within the corporate limits of a municipality or other political subdivision. Such officers shall be under the exclusive control and direction of the Superintendent of State Police and shall be responsible for the preservation of public peace, prevention of crime, apprehension of criminals, protection of the rights of persons and property, and enforcement of the laws and regulations of the Commonwealth within the limits of any such projects. All other police officers of the Commonwealth and of each locality or other political subdivision through which any project, or portion thereof, extends shall have the same powers and jurisdiction within the limits of such projects as they have beyond such limits and shall have access to the projects at any time for the purpose of exercising such powers and jurisdiction.

The Board is authorized and empowered to employ and appoint "project guards" for the purpose of protecting the projects and to enforce the regulations of the Board, except those paralleling state law, established for the use of such projects. Such guards may issue summons to appear or arrest on view without warrant and conduct before the nearest officer authorized by law to admit to bail any persons violating, within or upon the projects, any such rule or regulation. The provisions of §§ 46.2-936 and 46.2-940 shall apply mutatis mutandis to the issuance of summons or arrests without warrants pursuant to this section.

The violation of any regulation adopted by the Board pursuant to the authority hereby granted shall be punishable as follows: If such violation would have been a violation of law if committed on any public street or highway in the county, city, or town in which such violation occurred, it shall be punishable in the same manner as if it had been committed on such public road, street, or highway; otherwise it shall be punishable as a misdemeanor.

The powers and duties of the Board enumerated in this chapter shall not be construed as a limitation of the general powers or duties of the Board. The Board, in addition to the powers and duties enumerated in this chapter, shall do and perform any and all things and acts necessary in the construction or acquisition, maintenance, and operation of any project to be constructed or acquired under the provisions of this chapter, to the end that such project may become and be operated free of tolls as early as possible and practicable, subject only to the express limitations of this chapter and the limitations of other laws and constitutional provisions applicable thereto.

§ 33.2-1727. Revenue refunding bonds and revenue bonds for combined purposes.

Notwithstanding any other provision of this chapter and without regard to any other restrictions or limitations contained in this chapter, the Board is authorized to provide by resolution (i) for the issuance of revenue refunding bonds of the Commonwealth for the purpose of refunding any revenue bonds issued under the provisions of this chapter and then outstanding, including interest to the earliest call date of such outstanding bonds and premiums, if any, payable on such call date, and (ii) for the issuance of a single issue of revenue bonds of the Commonwealth for the combined purpose of providing funds (a) to pay the cost of either or both of the projects described in subdivisions 2 and 5 of the definition of "project" in § 33.2-1700 in the event the Board has decided or shall decide to construct either or both of such projects under authority granted in this chapter and (b) to refund revenue bonds of the Commonwealth issued under the provisions of this chapter and then outstanding, including interest to the earliest call date of such outstanding bonds and premiums, if any, payable on such call date. For the purposes of this section, "project," in relation to the project described in subdivision 5 of the definition of "project" in § 33.2-1700, includes approach highways thereto and bus facilities for the transportation of passengers through or over the project if the Board deems it advisable to construct such approach highways or acquire such bus facilities, and "cost of the project," in relation to the projects described in subdivisions 2 and 5 of the definition of "project" in § 33.2-1700, includes an amount sufficient to reimburse the Board for expenditures or advances made by the Board on account of the cost of either or both of the projects and, in relation to the project described in subdivision 5 of the definition of "project" in § 33.2-1700, includes provision of a sum deemed by the Board to be sufficient for the

purpose and includes the cost of constructing approach highways and of providing bus facilities if the Board deems it expedient to construct such approach highways or acquire such facilities as a part of the project described in subdivision 5 of the definition of "project" in § 33.2-1700. In the event bonds are issued for the combined purpose set forth in clause (ii), such amount of the proceeds of such bonds as may be required, together with other funds available for such purpose, for the redemption of the outstanding bonds to be refunded shall be deposited by the Board in trust with the trustee under the trust indenture securing such outstanding bonds for the sole and exclusive purpose of paying and redeeming such bonds, and the balance of such proceeds shall be used solely for the payment of the cost of the project to be constructed.

The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the duties of the Commonwealth and of the Board in respect to the same shall be governed by the provisions of this chapter as applicable.

§ 33.2-1728. Chapter provides alternative method.

This chapter shall be deemed to provide an additional and alternative method for actions authorized by this chapter and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any existing powers.

§ 33.2-1729. Chapter liberally construed.

This chapter, being necessary for the welfare of the Commonwealth and its inhabitants, shall be liberally construed to effect the purposes hereof.

CHAPTER 18.

PUBLIC-PRIVATE TRANSPORTATION ACT OF 1995.

§ 33.2-1800. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affected locality or public entity" means any county, city, or town in which all or a portion of a qualifying transportation facility is located and any other responsible public entity directly affected by the qualifying transportation facility.

"Commission" means the State Corporation Commission.

"Comprehensive agreement" means the comprehensive agreement between the private entity and the responsible public entity required by § 33.2-1808.

"Concession" means any lease, license, franchise, easement, or other binding agreement transferring rights for the use or control, in whole or in part, of a qualifying transportation facility by a responsible public entity to a private entity for a definite term during which the private entity will provide transportation-related services, including operations and maintenance, revenue collection, toll-collection enforcement, design, construction, and other activities that enhance throughput, 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.

"Concession payment" means a payment from a private entity to a responsible public entity in connection with the development and/or operation of a qualifying transportation facility pursuant to a concession.

"Develop" or "development" means to plan, design, develop, finance, lease, acquire, install, construct, or expand.

"Interim agreement" means an agreement, including a memorandum of understanding or binding preliminary agreement, between the private entity and the responsible public entity that provides for completion of studies and any other activities to advance the development and/or operation of a qualifying transportation facility.

"Material default" means any default by the private entity in the performance of its duties under subsection E of § 33.2-1807 that jeopardizes adequate service to the public from a qualifying transportation facility and remains unremedied after the responsible public entity has provided notice to the private entity and a reasonable cure period has elapsed.

"Multimodal transportation facility" means a transportation facility consisting of multiple modes of transportation.

"Operate" or "operation" means to finance, maintain, improve, equip, modify, repair, or operate.

"Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity.

"Public entity" means the Commonwealth and any agency or authority thereof; any county, city, or town; and any other political subdivision of any of the foregoing, but does not include any public service company.

"Qualifying transportation facility" means one or more transportation facilities developed and/or operated by a private entity pursuant to this chapter.

"Responsible public entity" means a public entity, including local governments and regional authorities, that has the power to develop and/or operate the qualifying transportation facility.

"Revenues" means all revenues, including income; earnings; user fees; lease payments; allocations; federal, state, regional, and local appropriations or the appropriations or other funds available to any political subdivision, authority, or instrumentality thereof; bond proceeds; equity investments, service payments, or any combination thereof arising out of or in connection with supporting the development and/or operation of a qualifying transportation facility, including money received as grants or otherwise from the United States of America, from any public entity, or from any agency or instrumentality of the foregoing in aid of such facility.

"Service contract" means a contract entered into between a public entity and the private entity pursuant to § 33.2-1804.

"Service payments" means payments to the private entity in connection with the development and/or operation of a qualifying transportation facility pursuant to a service contract.

"State" means the Commonwealth of Virginia.

"Transportation facility" means any road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility, or similar commercial facility used for the transportation of persons or goods, together with any buildings, structures, parking areas, appurtenances, and other property needed to operate such facility; however, "transportation facility" does not include a commercial or retail use or enterprise not essential to the transportation of persons or goods.

"User fees" mean the rates, tolls, fees, or other charges imposed by the private entity for use of all or a portion of a qualifying transportation facility pursuant to the interim or comprehensive agreement.

§ 33.2-1801. Policy.

A. The General Assembly finds that:

1. There is a public need for timely development and/or operation of transportation facilities within the Commonwealth that address the needs identified by the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, enhancing economic efficiency, or any combination thereof and that such public need may not be wholly satisfied by existing methods of procurement in which qualifying transportation facilities are developed and/or operated;

2. Such public need may not be wholly satisfied by existing ways in which transportation facilities are developed and/or operated; and

3. Authorizing private entities to develop and/or operate one or more transportation facilities may result in the development and/or operation of such transportation facilities to the public in a more timely, more efficient, or less costly fashion, thereby serving the public safety and welfare.

B. An action, other than the approval of the responsible public entity under § 33.2-1803, shall serve the public purpose of this chapter if such action, including undertaking a concession, facilitates the timely development and/or operation of a qualifying transportation facility.

C. It is the intent of this chapter, among other things, to encourage investment in the Commonwealth by private entities that facilitates the development and/or operation of transportation facilities. Accordingly, public and private entities may have the greatest possible flexibility in contracting with each other for the provision of the public services that are the subject of this chapter.

D. This chapter shall be liberally construed in conformity with the purposes hereof.

§ 33.2-1802. Prerequisite for operation.

A. Any private entity seeking authorization under this chapter to develop and/or operate a transportation facility shall first obtain approval of the responsible public entity under § 33.2-1803. Such private entity may

initiate the approval process by requesting approval pursuant to subsection A of § 33.2-1803 or the responsible public entity may request proposals pursuant to subsection B of § 33.2-1803.

B. Any responsible public entity that is an agency or institution of the Commonwealth receiving a detailed proposal from a private entity for a qualifying transportation facility that is a port facility as defined in § 62.1-140 shall provide notice of the receipt of such proposal to the Public-Private Partnership Advisory Commission established in § 30-279.

§ 33.2-1803. Approval by the responsible public entity.

A. The private entity may request approval by the responsible public entity. Any such request shall be accompanied by the following material and information unless waived by the responsible public entity in its guidelines or other instructions given, in writing, to the private entity with respect to the transportation facility or facilities that the private entity proposes to develop and/or operate as a qualifying transportation facility:

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

2. A description of the transportation facility or facilities, including the conceptual design of such facility or facilities and all proposed interconnections with other transportation facilities;

3. The proposed date for development and/or operation of the transportation facility or facilities along with an estimate of the life-cycle cost of the transportation facility as proposed;

4. A statement setting forth the method by which the private entity proposes to secure any property interests required for the transportation facility or facilities;

5. Information relating to the current transportation plans, if any, of each affected locality or public entity;

6. A list of all permits and approvals required for developing and/or operating improvements to the transportation facility or facilities from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;

7. A list of public utility facilities, if any, that will be crossed by the transportation facility or facilities and a statement of the plans of the private entity to accommodate such crossings;

8. A statement setting forth the private entity's general plans for developing and/or operating the transportation facility or facilities, including identification of any revenue, public or private, or proposed debt or equity investment or concession proposed by the private entity;

9. The names and addresses of the persons who may be contacted for further information concerning the request;

10. Information on how the private entity's proposal will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, enhancing economic efficiency, or any combination thereof; and

11. Such additional material and information as the responsible public entity may reasonably request pursuant to its guidelines or other written instructions.

B. The responsible public entity may request proposals from private entities for the development and/or operation of transportation facilities. The responsible public entity shall not charge a fee to cover the costs of processing, reviewing, and evaluating proposals received in response to such requests.

C. The responsible public entity may grant approval of the development and/or operation of the transportation facility or facilities as a qualifying transportation facility if the responsible public entity determines that it serves the public purpose of this chapter. The responsible public entity may determine that the development and/or operation of the transportation facility or facilities as a qualifying transportation facility serves such public purpose if:

1. There is a public need for the transportation facility or facilities the private entity proposes to develop and/or operate as a qualifying transportation facility;

2. The transportation facility or facilities and the proposed interconnections with existing transportation facilities, and the private entity's plans for development and/or operation of the qualifying transportation facility or facilities, are, in the opinion of the responsible public entity, reasonable and will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, enhancing economic efficiency, or any combination thereof;

3. The estimated cost of developing and/or operating the transportation facility or facilities is reasonable in relation to similar facilities; and

4. The private entity's plans will result in the timely development and/or operation of the transportation facility or facilities or their more efficient operation.

In evaluating any request, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of outside advisors or consultants having relevant experience.

D. The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the request submitted by a private entity pursuant to subsection A, including reasonable attorney fees and fees for financial and other necessary advisors or consultants. The responsible public entity shall also develop guidelines that establish the process for the acceptance and review of a proposal from a private entity pursuant to subsections A and B. Such guidelines shall establish a specific schedule for review of the proposal by the responsible public entity, a process for alteration of that schedule by the responsible public entity if it deems that changes are necessary because of the scope or complexity of proposals it receives, the process for receipt and review of competing proposals, and the type and amount of information that is necessary for adequate review of proposals in each stage of review. For qualifying transportation facilities that have approved or pending state and federal environmental clearances, have secured significant right-of-way, have previously allocated significant state or federal funding, or exhibit other circumstances that could reasonably reduce the amount of time to develop and/or operate the qualifying transportation facility in accordance with the purpose of this chapter, the guidelines shall provide for a prioritized documentation, review, and selection process.

E. The approval of the responsible public entity shall be subject to the private entity's entering into an interim agreement or a comprehensive agreement with the responsible public entity. For any project with an estimated construction cost of over $50 million, the responsible public entity also shall require the private entity to pay the costs for an independent audit of any and all traffic and cost estimates associated with the private entity's proposal, as well as a review of all public costs and potential liabilities to which taxpayers could be exposed (including improvements to other transportation facilities that may be needed as a result of the proposal, failure by the private entity to reimburse the responsible public entity for services provided, and potential risk and liability in the event the private entity defaults on the comprehensive agreement or on bonds issued for the project). This independent audit shall be conducted by an independent consultant selected by the responsible public entity, and all such information from such review shall be fully disclosed.

F. In connection with its approval of the development and/or operation of the transportation facility or facilities as a qualifying transportation facility, the responsible public entity shall establish a date for the acquisition of or the beginning of construction of or improvements to the qualifying transportation facility. The responsible public entity may extend such date.

G. The responsible public entity shall take appropriate action, as more specifically set forth in its guidelines, to protect confidential and proprietary information provided by the private entity pursuant to an agreement under subdivision 11 of § 2.2-3705.6.

H. The responsible public entity may also apply for, execute, and/or endorse applications submitted by private entities to obtain federal credit assistance for qualifying projects developed and/or operated pursuant to this chapter.

§ 33.2-1804. Service contracts.

In addition to any authority otherwise conferred by law, any public entity may contract with a private entity for transportation services to be provided by a qualifying transportation facility in exchange for such service payments and other consideration as such public entity may deem appropriate.

§ 33.2-1805. Affected localities or public entities.

A. Any private entity requesting approval from, or submitting a proposal to, a responsible public entity under § 33.2-1803 shall notify each affected locality or public entity by furnishing a copy of its request or proposal to each affected locality or public entity.

B. Each affected locality or public entity that is not a responsible public entity for the respective qualifying transportation facility shall, within 60 days after receiving a request for comments from the responsible public

entity, submit in writing any comments it may have on the proposed qualifying transportation facility to the responsible public entity and indicate whether the facility will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, enhancing economic efficiency, or any combination thereof.

C. Any qualifying transportation facility, title or easement to which is held by the Commonwealth or an agency or authority therefor and the rights to develop or operate which have been granted to the private entity through a concession as defined in § 33.2-1800, shall be subject to the provisions of Title 15.2 in the same manner as a facility of the Commonwealth, mutatis mutandis, except that such private entity shall comply with the provisions of subsections B and C of § 15.2-2202 as they relate to the affected locality's or public entity's comprehensive plan.

§ 33.2-1806. Dedication of public property.

Any public entity may dedicate any property interest that it has for public use as a qualified transportation facility if it finds that so doing will serve the public purpose of this chapter. In connection with such dedication, a public entity may convey any property interest that it has, subject to the conditions imposed by general law governing such conveyances, to the private entity, subject to the provisions of this chapter, for such consideration as such public entity may determine. The aforementioned consideration may include the agreement of the private entity to develop and/or operate the qualifying transportation facility. The property interests that the public entity may convey to the private entity in connection with a dedication under this section may include licenses, franchises, easements, concessions, or any other right or interest the public entity deems appropriate. Such property interest including a leasehold interest in and/or rights to use real property constituting a qualifying transportation facility shall be considered property indirectly owned by a government if described in § 58.1-3606.1.

§ 33.2-1807. Powers and duties of the private entity.

A. The private entity shall have all power allowed by law generally to a private entity having the same form of organization as the private entity and shall have the power to develop and/or operate the qualifying transportation facility and impose user fees and/or enter into service contracts in connection with the use thereof. However, no tolls or user fees may be imposed by the private entity on Interstate 81 without the prior approval of the General Assembly.

B. The private entity may own, lease, or acquire any other right to use or develop and/or operate the qualifying transportation facility.

C. Subject to applicable permit requirements, the private entity shall have the authority to cross any canal or navigable watercourse so long as the crossing does not unreasonably interfere with then current navigation and use of the waterway.

D. In operating the qualifying transportation facility, the private entity may:

1. Make classifications according to reasonable categories for assessment of user fees; and

2. With the consent of the responsible public entity, make and enforce reasonable rules to the same extent that the responsible public entity may make and enforce rules with respect to a similar transportation facility.

E. The private entity shall:

1. Develop and/or operate the qualifying transportation facility in a manner that meets the standards of the responsible public entity for transportation facilities operated and maintained by such responsible public entity, all in accordance with the provisions of the interim agreement or the comprehensive agreement;

2. Keep the qualifying transportation facility open for use by the members of the public in accordance with the terms and conditions of the interim or comprehensive agreement after its initial opening upon payment of the applicable user fees and/or service payments, provided that the qualifying transportation facility may be temporarily closed because of emergencies or, with the consent of the responsible public entity, to protect the safety of the public or for reasonable construction or maintenance procedures;

3. Maintain, or provide by contract for the maintenance of, the qualifying transportation facility;

4. Cooperate with the responsible public entity in establishing any interconnection with the qualifying transportation facility requested by the responsible public entity; and

5. Comply with the provisions of the interim or comprehensive agreement and any service contract.

§ 33.2-1808. Comprehensive agreement.

A. Prior to developing and/or operating the qualifying transportation facility, the private entity shall enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement shall, as appropriate, provide for:

1. Delivery of performance and payment bonds in connection with the development and/or operation of the qualifying transportation facility, in the forms and amounts satisfactory to the responsible public entity;

2. Review of plans for the development and/or operation of the qualifying transportation facility by the responsible public entity and approval by the responsible public entity if the plans conform to standards acceptable to the responsible public entity;

3. Inspection of construction of or improvements to the qualifying transportation facility by the responsible public entity to ensure that such construction or improvements conform to the standards acceptable to the responsible public entity;

4. Maintenance of a policy or policies of public liability insurance (copies of which shall be filed with the responsible public entity accompanied by proofs of coverage) or self-insurance, each in form and amount satisfactory to the responsible public entity and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying transportation facility;

5. Monitoring of the maintenance practices of the private entity by the responsible public entity and the taking of such actions as the responsible public entity finds appropriate to ensure that the qualifying transportation facility is properly maintained;

6. Reimbursement to be paid to the responsible public entity for services provided by the responsible public entity;

7. Filing of appropriate financial statements in a form acceptable to the responsible public entity on a periodic basis;

8. Compensation to the private entity that may include a reasonable development fee, a reasonable maximum rate of return on investment, and/or reimbursement of development expenses in the event of termination for convenience by the responsible public entity as agreed upon between the responsible public entity and the private entity;

9. The date of termination of the private entity's authority and duties under this chapter and dedication to the appropriate public entity; and

10. Guaranteed cost and completion guarantees related to the development and/or operation of the qualified transportation facility and payment of damages for failure to meet the completion guarantee.

B. The comprehensive agreement shall provide for such user fees as may be established by agreement of the parties. Any user fees shall be set at a level that takes into account any lease payments, service payments, and compensation to the private entity or as specified in the comprehensive agreement. A copy of any service contract shall be filed with the responsible public entity. A schedule of the current user fees shall be made available by the private entity to any member of the public on request. In negotiating user fees under this section, the parties shall establish fees that are the same for persons using the facility under like conditions except as required by agreement between the parties to preserve capacity and prevent congestion on the qualifying transportation facility. The execution of the comprehensive agreement or any amendment thereto shall constitute conclusive evidence that the user fees provided for therein comply with this chapter. User fees established in the comprehensive agreement as a source of revenues may be in addition to or in lieu of service payments.

C. In the comprehensive agreement, the responsible public entity may agree to make grants or loans for the development and/or operation of the qualifying transportation facility from amounts received from the federal government or any agency or instrumentality thereof.

D. The comprehensive agreement shall incorporate the duties of the private entity under this chapter and may contain such other terms and conditions that the responsible public entity determines serve the public purpose of this chapter. Without limitation, the comprehensive agreement may contain provisions under which the responsible public entity agrees to provide notice of default and cure rights for the benefit of the private entity and the persons specified therein as providing financing for the qualifying transportation facility. The comprehensive agreement may contain such other lawful terms and conditions to which the private entity and

the responsible public entity mutually agree, including provisions regarding unavoidable delays or provisions providing for a loan of public funds for the development and/or operation of one or more qualifying transportation facilities.

E. The comprehensive agreement shall provide for the distribution of any earnings in excess of the maximum rate of return as negotiated in the comprehensive agreement. Without limitation, excess earnings may be distributed to the Transportation Trust Fund, to the responsible public entity, or to the private entity for debt reduction or they may be shared with appropriate public entities. Any payments under a concession arrangement for which the Commonwealth is the responsible public entity shall be paid into the Transportation Trust Fund.

F. Any changes in the terms of the comprehensive agreement, as may be agreed upon by the parties, shall be added to the comprehensive agreement by written amendment.

G. Notwithstanding any contrary provision of this chapter, a responsible public entity may enter into a comprehensive agreement with multiple private entities if the responsible public entity determines in writing that it is in the public interest to do so.

H. The comprehensive agreement may provide for the development and/or operation of phases or segments of the qualifying transportation facility.

§ 33.2-1809. Interim agreement.

A. Prior to or in connection with the negotiation of the comprehensive agreement, the responsible public entity may enter into an interim agreement with the private entity proposing the development and/or operation of the facility or facilities. Such interim agreement may (i) permit the private entity to commence activities for which it may be compensated relating to the proposed qualifying transportation facility, including project planning and development, advance right-of-way acquisition, design and engineering, environmental analysis and mitigation, survey, conducting transportation and revenue studies, and ascertaining the availability of financing for the proposed facility or facilities; (ii) establish the process and timing of the negotiation of the comprehensive agreement; and (iii) contain any other provisions related to any aspect of the development and/or operation of a qualifying transportation facility that the parties may deem appropriate.

B. Notwithstanding any provision of this chapter to the contrary, a responsible public entity may enter in to an interim agreement with multiple private entities if the responsible public entity determines in writing that it is in the public interest to do so.

§ 33.2-1810. Multiple public entities.

A. If a private entity submits a proposal pursuant to subsection A of § 33.2-1803 to develop and/or operate a qualifying transportation facility or a multimodal transportation facility that may require approval by more than one public entity, representatives of each of the affected public entities shall, prior to acceptance of such proposal, convene and determine which public entity shall serve as the coordinating responsible public entity. Such determination shall occur within 60 days of the receipt of a proposal by the respective public entities.

B. If public entities request proposals from private entities for the development and/or operation of a qualifying transportation facility or a multimodal transportation facility pursuant to subsection B of § 33.2-1803, the determination of which public entity shall serve as the coordinating responsible public entity shall be made prior to any request for proposals.

C. Once a determination has been made in accordance with subsection A or B, the coordinating responsible public entity and the private entity shall proceed in accordance with this chapter.

§ 33.2-1811. Federal, state, and local assistance.

A. The responsible public entity may take any action to obtain federal, state, or local assistance for a qualifying transportation facility that serves the public purpose of this chapter and may enter into any contracts required to receive such federal assistance. If the responsible public entity is a state agency, any funds received from the state or federal government or any agency or instrumentality thereof shall be subject to appropriation by the General Assembly. The responsible public entity may determine that it serves the public purpose of this chapter for all or any portion of the costs of a qualifying transportation facility to be paid, directly or indirectly, from the proceeds of a grant or loan made by the federal, state, or local government or any agency or instrumentality thereof.

B. The responsible public entity may agree to make grants or loans for the development and/or operation of the qualifying transportation facility from amounts received from the federal, state, or local government or any agency or instrumentality thereof.

C. Nothing in this chapter or in an interim or comprehensive agreement entered into pursuant to this chapter shall be deemed to enlarge, diminish, or affect the authority, if any, otherwise possessed by the responsible public entity to take action that would impact the debt capacity of the Commonwealth or the affected localities or public entities.

§ 33.2-1812. Financing.

Any financing of a qualifying transportation facility may be in such amounts and upon such terms and conditions as may be determined by the parties to the interim or comprehensive agreement. Without limiting the generality of the foregoing, the private entity and the responsible public entity may propose to utilize 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; enter into leases, concessions, and grant and loan agreements; access any designated transportation trust funds; borrow or accept grants from any state infrastructure bank; and secure any financing with a pledge of, security interest in, or lien on any or all of its property, including all of its property interests in the qualifying transportation facility.

§ 33.2-1813. Material default; remedies.

A. Upon the occurrence and during the continuation of material default, the responsible public entity may exercise any or all of the following remedies:

1. The responsible public entity may elect to take over the transportation facility or facilities and in such case shall succeed to all of the right, title, and interest in such transportation facility or facilities, subject to any liens on revenues previously granted by the private entity to any person providing financing therefor.

2. The responsible public entity may terminate the interim or comprehensive agreement and exercise any other rights and remedies that may be available at law or in equity.

3. The responsible public entity may make or cause to be made any appropriate claims under the performance and/or payment bonds required by § 33.2-1808.

B. In the event the responsible public entity elects to take over a qualifying transportation facility pursuant to subsection A, the responsible public entity may develop and/or operate the qualifying transportation facility, impose user fees for the use thereof, and comply with any service contracts as if it were the private entity. Any revenues that are subject to a lien shall be collected for the benefit of, and paid to, secured parties, as their interests may appear, to the extent necessary to satisfy the private entity's obligations to secured parties, including the maintenance of reserves, and such liens shall be correspondingly reduced and, when paid off, released. Before any payments to, or for the benefit of, secured parties, the responsible public entity may use revenues to pay current operation and maintenance costs of the qualifying transportation facility or facilities, including compensation to the responsible public entity for its services in operating and maintaining the qualifying transportation facility. Remaining revenues, if any, after all payments for operation and maintenance of the transportation facility or facilities, and to, or for the benefit of, secured parties, have been made, shall be paid to the private entity, subject to the negotiated maximum rate of return. The right to receive such payment, if any, shall be considered just compensation for the transportation facility or facilities. The full faith and credit of the responsible public entity shall not be pledged to secure any financing of the private entity by the election to take over the qualifying transportation facility. Assumption of operation of the qualifying transportation facility shall not obligate the responsible public entity to pay any obligation of the private entity from sources other than revenues.

§ 33.2-1814. Condemnation.

A. At the request of the private entity, the responsible public entity may exercise any power of condemnation that it has under law for the purpose of acquiring any lands or estates or interests therein to the extent that the responsible public entity finds that such action serves the public purpose of this chapter. Any amounts to be paid in any such condemnation proceeding shall be paid by the private entity.

B. Except as provided in subsection A, until the Commission, after notice to the private entity and the secured parties, as may appear in the private entity's records, and an opportunity for hearing, has entered a

final declaratory judgment that a material default has occurred and is continuing, the power of condemnation may not be exercised against a qualifying transportation facility.

C. After the entry of such final order by the Commission, any responsible public entity having the power of condemnation under state law may exercise such power of condemnation, in lieu of or at any time after taking over the transportation facility pursuant to subdivision A 1 of § 33.2-1813, to acquire the qualifying transportation facility or facilities. Nothing in this chapter shall be construed to limit the exercise of the power of condemnation by any responsible public entity against a qualifying transportation facility after the entry by the Commission of a final declaratory judgment order pursuant to subsection B. Any person that has provided financing for the qualifying transportation facility and the private entity, to the extent of its capital investment, may participate in the condemnation proceedings with the standing of a property owner.

§ 33.2-1815. Utility crossings.

The private entity and each public service company, public utility, railroad, and cable television provider whose facilities are to be crossed or affected shall cooperate fully with the other in planning and arranging the manner of the crossing or relocation of the facilities. Any such entity possessing the power of condemnation is hereby expressly granted such powers in connection with the moving or relocation of facilities to be crossed by the qualifying transportation facility or that must be relocated to the extent that such moving or relocation is made necessary or desirable by construction of or improvements to the qualifying transportation facility, which shall be construed to include construction of or improvements to temporary facilities for the purpose of providing service during the period of construction or improvement. Should the private entity and any such public service company, public utility, railroad, and cable television provider be unable to agree upon a plan for the crossing or relocation, the Commission may determine the manner in which the crossing or relocation is to be accomplished and any damages due arising out of the crossing or relocation. The Commission may employ expert engineers who shall examine the location and plans for such crossing or relocation, hear any objections and consider modifications, and make a recommendation to the Commission. In such a case, the cost of the experts is to be borne by the private entity. Any amount to be paid for such crossing, construction, moving, or relocation of facilities shall be paid for by the private entity or any other person contractually responsible therefor under the interim or comprehensive agreement or under any other contract, license, or permit. The Commission shall make a determination within 90 days of notification by the private entity that the qualifying transportation facility will cross utilities subject to the Commission's jurisdiction.

§ 33.2-1816. Police powers; violations of law.

A. All police officers of the Commonwealth and of each affected locality or public entity shall have the same powers and jurisdiction within the limits of such qualifying transportation facility as they have in their respective areas of jurisdiction, and such police officers shall have access to the qualifying transportation facility at any time for the purpose of exercising such powers and jurisdiction. This authority does not extend to the private offices, buildings, garages, and other improvements of the private entity to any greater degree than the police power extends to any other private buildings and improvements.

B. To the extent the transportation facility is a road, bridge, tunnel, overpass, or similar transportation facility for motor vehicles, the traffic and motor vehicle laws of the Commonwealth or, if applicable, any locality or public entity shall be the same as those applying to conduct on similar transportation facilities in the Commonwealth or such locality or public entity. Punishment for offenses shall be as prescribed by law for conduct occurring on similar transportation facilities in the Commonwealth or such locality or public entity.

§ 33.2-1817. Dedication of assets.

The responsible public entity shall terminate the private entity's authority and duties under this chapter on the date set forth in the interim or comprehensive agreement. Upon termination, the authority and duties of the private entity under this chapter shall cease, and the qualifying transportation facility shall be dedicated to the responsible public entity or, if the qualifying transportation facility was initially dedicated by an affected locality or public entity, to such affected locality or public entity for public use.

§ 33.2-1818. Sovereign immunity.

Nothing in this chapter shall be construed as or deemed a waiver of the sovereign immunity of the Commonwealth, any responsible public entity, or any affected locality or public entity or any officer or employee thereof with respect to the participation in or approval of all or any part of the qualifying

transportation facility or its operation, including interconnection of the qualifying transportation facility with any other transportation facility. Localities in which a qualifying transportation facility is located shall possess sovereign immunity with respect to its construction and operation.

§ 33.2-1819. Procurement.

The Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to this chapter; however, a responsible public entity may enter into an interim or a comprehensive agreement only in accordance with guidelines adopted by it as follows:

1. A responsible public entity may enter into an interim or a comprehensive agreement in accordance with guidelines adopted by it that are consistent with procurement through "competitive sealed bidding" as set forth in § 2.2-4302.1 and subsection B of § 2.2-4310.

2. A responsible public entity may enter into an interim or a comprehensive agreement in accordance with guidelines adopted by it that are consistent with the procurement of "other than professional services" through competitive negotiation as set forth in § 2.2-4302.2 and subsection B of § 2.2-4310. Such responsible public entity shall not be required to select the proposal with the lowest price offer, but may consider price as one factor in evaluating the proposals received. Other factors that may be considered include (i) the proposed cost of the qualifying transportation facility; (ii) the general reputation, qualifications, industry experience, and financial capacity of the private entity; (iii) the proposed design, operation, and feasibility of the qualifying transportation facility; (iv) the eligibility of the facility for priority selection, review, and documentation timelines under the responsible public entity's guidelines; (v) local citizen and public entity comments; (vi) benefits to the public; (vii) the private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan; (viii) the private entity's plans to employ local contractors and residents; (ix) the safety record of the private entity; (x) the ability of the facility to address the needs identified in the appropriate state, regional or local transportation plan by improving safety, reducing congestion, increasing capacity, enhancing economic efficiency, or any combination thereof; and (xi) other criteria that the responsible public entity deems appropriate.

A responsible public entity shall proceed in accordance with the guidelines adopted by it pursuant to subdivision 1 unless it determines that proceeding in accordance with the guidelines adopted by it pursuant to this subdivision is likely to be advantageous to the responsible public entity and the public, based on (a) the probable scope, complexity, or urgency of a project; (b) risk sharing including guaranteed cost or completion guarantees, added value, or debt or equity investments proposed by the private entity; or (c) an increase in funding, dedicated revenue source or other economic benefit that would not otherwise be available. When the responsible public entity determines to proceed according to the guidelines adopted by it pursuant to this subdivision, it shall state the reasons for its determination in writing. If a state agency is the responsible public entity, the approval of the Secretary shall be required as more specifically set forth in the guidelines before the comprehensive agreement is signed.

3. Interim or comprehensive agreements for maintenance or asset management services for a transportation facility that is a highway, bridge, tunnel, or overpass, and any amendment or change order thereto that increases the highway lane-miles receiving services under such an agreement, shall be procured in accordance with guidelines that are consistent with procurement through "competitive sealed bidding" as set forth in § 2.2-4302.1 and subsection B of § 2.2-4310. Furthermore, such contracts shall be of a size and scope to encourage maximum competition and participation by agency prequalified contractors and otherwise qualified contractors.

4. The provisions of subdivision 3 shall not apply to maintenance or asset management services agreed to as part of the initial provisions of any interim or comprehensive agreement entered into for the original construction, reconstruction, or improvement of any highway pursuant to this chapter and shall not apply to any concession that, at a minimum, provides for (i) the construction, reconstruction, or improvement of any transportation facility or (ii) the operation and maintenance of any transportation facility with existing toll facilities.

5. Nothing in this section shall require that professional services be procured by any method other than competitive negotiation in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

§ 33.2-1820. Posting of conceptual proposals; public comment; public access to procurement records.

A. Conceptual proposals submitted in accordance with subsection A or B of § 33.2-1803 to a responsible public entity shall be posted by the responsible public entity within 10 working days after acceptance of such proposals as follows:

1. For responsible public entities that are state agencies, authorities, departments, institutions, and other units of state government, posting shall be on the Department of General Services' central electronic procurement website. For proposals submitted pursuant to subsection A of § 56-560, the notice posted shall (i) provide for a period of 120 days for the submission of competing proposals; (ii) include specific information regarding the proposed nature, timing, and scope of the qualifying transportation facility; and (iii) outline the opportunities that will be provided for public comment during the review process; and

2. For responsible public entities that are local public bodies, posting shall be on the responsible public entity's website or on the Department of General Services' central electronic procurement website. In addition, such public bodies may publish in a newspaper of general circulation in the area in which the contract is to be performed a summary of the proposals and the location where copies of the proposals are available for public inspection. Such local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Nothing in this section shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the responsible public entity so as to provide maximum notice to the public of the opportunity to inspect the proposals. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the responsible public entity and the private entity.

B. In addition to the posting requirements of subsection A, for 30 days prior to entering into an interim or comprehensive agreement, a responsible public entity shall provide an opportunity for public comment on the proposals. The public comment period required by this subsection may include a public hearing in the sole discretion of the responsible public entity. After the end of the public comment period, no additional posting shall be required.

C. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete and a decision to award has been made by a responsible public entity, the responsible public entity shall (i) post the major business points of the interim or comprehensive agreement, including the projected use of any public funds, on the Department of General Services' central electronic procurement website; (ii) outline how the public can submit comments on those major business points; and (iii) present the major business points of the interim or comprehensive agreement, including the use of any public funds, to its oversight board at a regularly scheduled meeting of the board that is open to the public.

D. Once an interim agreement or a comprehensive agreement has been entered into, a responsible public entity shall make procurement records available for public inspection, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). For the purposes of this subsection, procurement records shall not be interpreted to include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

E. Cost estimates relating to a proposed procurement transaction prepared by or for a responsible public entity shall not be open to public inspection.

F. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

G. The provisions of this section shall apply to accepted proposals regardless of whether the process of bargaining will result in an interim or a comprehensive agreement.

§ 33.2-1821. Jurisdiction.

The Commission shall have exclusive jurisdiction to adjudicate all matters specifically committed to its jurisdiction by this chapter.

§ 33.2-1822. Contributions and gifts; prohibition during approval process.

A. No private entity that has submitted a bid or proposal to a public entity that is an executive branch agency directly responsible to the Governor and is seeking to develop or operate a transportation facility pursuant to this chapter, and no individual who is an officer or director of such private entity, shall knowingly provide a contribution, gift, or other item with a value greater than $50 or make an express or implied promise to make such a contribution or gift to the Governor, his political action committee, or the Governor's Secretaries, if the Secretary is responsible to the Governor for an executive branch agency with jurisdiction over the matters at issue, following the submission of a proposal under this chapter until the execution of a comprehensive agreement thereunder. The provisions of this section shall apply only for any proposal or an interim or comprehensive agreement where the stated or expected value of the contract is $5 million or more.

B. Any person who knowingly violates this section shall be subject to a civil penalty of $500 or up to two times the amount of the contribution or gift, whichever is greater. The attorney for the Commonwealth shall initiate civil proceedings to enforce the civil penalties. Any civil penalties collected shall be payable to the State Treasurer for deposit to the general fund.

§ 33.2-1823. Preservation of the Virginia Highway Corporation Act of 1988.

Nothing in this chapter shall be construed to repeal or change in any manner the Virginia Highway Corporation Act of 1988 (§ 56-535 et seq.), as amended. Nothing in the Virginia Highway Corporation Act of 1988, as amended, shall apply to qualifying transportation facilities undertaken pursuant to the authority of this chapter.

§ 33.2-1824. Severability.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

SUBTITLE IV.

LOCAL AND REGIONAL TRANSPORTATION.

CHAPTER 19.

TRANSPORTATION DISTRICT ACT OF 1964.

Article 1.

General Provisions.

§ 33.2-1900. Declaration of policy.

The development of transportation systems, composed of transit facilities, public highways, and other modes of transport, is necessary for the orderly growth and development of the urban areas of the Commonwealth; for the safety, comfort, and convenience of its citizens; and for the economical utilization of public funds. The provision of the necessary facilities and services cannot be achieved by the unilateral action of the counties and cities, and the attainment thereof requires planning and action on a regional basis, conducted cooperatively and on a continuing basis, between representatives of the affected political subdivisions and the Commonwealth Transportation Board. In those urban areas of the Commonwealth that together form a single metropolitan area, solutions must be jointly sought with the affected political subdivisions and highway departments. Such joint action should be conducted in a manner that preserves, to the extent the necessity for joint action permits, local autonomy over patterns of growth and development of each participating political subdivision or locality. The requisite joint action may best be achieved through the device of a transportation district, having the powers, functions, and duties set forth in this chapter. In the provision of improved or expanded transit facilities, it is the policy of the Commonwealth to make use of private enterprise to the extent reasonably practicable.

§ 33.2-1901. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agency" or "such agency" means an agency authorized by, or arising from action of, the General Assembly to plan for or provide transportation facilities and service for a metropolitan area located wholly or in part in the Commonwealth.

"Commission" or "district commission" means the governing body of a district.

"Component governments" means the counties and cities composing a transportation district and the various departments, bureaus, and divisions of such counties and cities.

"District" means a transportation district authorized to be created by this chapter.

"Governing bodies" means the boards of supervisors of counties and councils of cities composing a transportation district.

"Metropolitan area" means a metropolitan statistical area as defined by the U.S. Census Bureau and the Office of Management and Budget or any contiguous counties or cities within the Commonwealth that together constitute an urban area.

"Person" means an individual, partnership, association, or corporation or any governmental agency or authority.

"State," when applied to a part of the United States, includes any of the 50 states and the District of Columbia.

"Transportation facilities," "transit facilities," or "facilities" means all those matters and things utilized in rendering transportation service by means of rail, bus, water, or air and any other mode of travel, including tracks, rights-of-way, bridges, tunnels, subways, and rolling stock for rail, motor vehicle, marine, and air transportation; stations, terminals, and ports; areas for parking; buildings; structures; and all equipment, fixtures, and business activities reasonably required for the performance of transportation service, but does not include any such facilities owned by any person, company, association, or corporation the major part of whose transportation service extends beyond a transportation district created in this chapter.

§ 33.2-1902. Authorization to issue summons.

Conductors of railroad trains, motormen, and station and depot agents of any transportation district created pursuant to this chapter shall have the power to issue a summons for any violation of § 18.2-160.1 with respect to any train operated by or under contract with such transportation district.

Article 2.

Creation of Districts.

§ 33.2-1903. Procedure for creation of districts.

A. Any two or more counties or cities may, in conformance with the procedure set forth in this section, or as otherwise may be provided by law, constitute a transportation district and shall have and exercise the powers set forth in this section and such additional powers as may be granted by the General Assembly. A transportation district may be created by ordinance adopted by the governing body of each participating county and city, which ordinances shall (i) set forth the name of the proposed transportation district, which shall include the words "transit district" or "transportation district," (ii) fix the boundaries thereof, (iii) name the counties and cities that are in whole or in part to be embraced therein, and (iv) contain a finding that the orderly growth and development of the county or city and the comfort, convenience, and safety of its citizens require an improved transportation system, composed of transit facilities, public highways, and other modes of transport, and that joint action through a transportation district by the counties and cities that are to compose the proposed transportation district will facilitate the planning and development of the needed transportation system. Such ordinances shall be filed with the Secretary of the Commonwealth and, upon certification by that officer to the Tax Commissioner and the governing body of each of the participating counties and cities that the ordinances required by this chapter have been filed and, upon the basis of the facts set forth therein, satisfy such requirements, the territory defined in such ordinances, upon the entry of such certification in the minutes of the proceedings of the governing body of each of the counties and cities, shall be and constitute a transportation district for all of the purposes of this chapter, known and designated by the name stated in the ordinances.

B. Notwithstanding the provisions of subsection A, any county or city may, subject to the applicable provisions of this chapter, constitute itself a transportation district in the event that no governing body of any contiguous county or city wishes to combine for such purpose, provided that the governing body of such single locality transportation district shall comply with the provisions of subsection A by adopting an ordinance that (i) sets forth the name of the proposed transportation district, which shall include the words "transit district" or "transportation district"; (ii) fixes, in such county or city, the boundaries thereof; (iii) names the county or city that is in whole or in part to be embraced therein; and (iv) contains a finding that the orderly growth and

development of the county or city and the comfort, convenience, and safety of its citizens require an improved transportation district, composed of transit facilities, public highways, and other modes of transport, and that joint action with contiguous counties and cities has not been agreed to at this time, but that the formation of a transportation district will facilitate the planning and development of the needed transportation system, and shall file such ordinance in the manner and mode required by subsection A. At such time as the governing body of any contiguous county or city desires to combine with the original locality for the formation of an enlarged transportation district, it shall enter into an agreement with the commission of the original transportation district on such terms and conditions, consistent with the provisions of this chapter, as may be agreed upon by such commission and such additional county or city, and in conformance with the following procedures. The governing body of the county or city having jurisdiction over the territory to be added to the original transportation district shall adopt an ordinance specifying the area to be enlarged, containing the finding specified in clause (iv) of subsection A, and a statement that a contract or agreement between the county or city and the commission specifying the terms and conditions of admittance to the transportation district has been executed. The ordinance, to which shall be attached a certified copy of such contract, shall be filed with the Secretary of the Commonwealth and, upon certification by that officer to the Tax Commissioner, the commission, and the governing body of each of the component counties and cities that the ordinance required by this section has been filed, and that the terms thereof conform to the requirements of this section, such additional county, or part thereof, or city, upon the entry of such certification in the minutes of the proceedings of the governing body of such county or city, shall become a component government of the transportation district and the county, or portion thereof specified, or city shall be embraced by the transportation district.

§ 33.2-1904. Northern Virginia Transportation District and Commission.

A. There is hereby created the Northern Virginia Transportation District (the District), comprising the Counties of Arlington, Fairfax, and Loudoun; the Cities of Alexandria, Falls Church, and Fairfax; and such other county or city contiguous to the District that agrees to join the District.

B. There is hereby established the Northern Virginia Transportation Commission (the Commission) as a transportation commission pursuant to this chapter. The Commission shall consist of five nonlegislative citizen members from Fairfax County, three nonlegislative citizen members from Arlington County, one nonlegislative citizen member from Loudoun County, two nonlegislative citizen members from the City of Alexandria, one nonlegislative member from the City of Falls Church, one nonlegislative citizen member from the City of Fairfax, and the Chairman of the Commonwealth Transportation Board or his designee to serve ex officio with voting privileges. If a county or city contiguous to the District agrees to join the District, such locality shall appoint one nonlegislative citizen member to the Commission. Members from the counties and cities shall be appointed from their respective governing bodies. The Commission shall also include four members of the House of Delegates appointed by the Speaker of the House of Delegates for terms coincident with their terms of office and two members of the Senate appointed by the Senate Committee on Rules for terms coincident with their terms of office. Members may be reappointed for successive terms. All members shall be citizens of the Commonwealth. Except for the Chairman of the Commonwealth Transportation Board or his designee, all members of the Commission shall be residents of the localities composing the District. Vacancies occurring other than by expiration of a term shall be filled for the unexpired term. Vacancies shall be filled in the same manner as the original appointments.

Article 3.

Incorporation of District; Creation, Organization, Etc., of Commission.

§ 33.2-1905. District a body corporate.

Each transportation district created pursuant to this chapter, or pursuant to an act of the General Assembly, is hereby created as a body corporate and politic under the name of, and to be known by, the name of the district with the word "commission" appended.

§ 33.2-1906. Creation of commission to control corporation.

In and for each transportation district a commission is hereby created to manage and control the functions, affairs, and property of the corporation and to exercise all of the rights, powers, and authority and perform all of the duties conferred or imposed upon the corporation.

§ 33.2-1907. Members of transportation district commissions.

A. Any transportation district commission created pursuant to this chapter shall consist of the number of members the component governments shall agree upon, or as may otherwise be provided by law. The governing body of each participating county and city shall appoint from among its members the number of commissioners to which the county or city is entitled; however, for those commissions with powers as set forth in subsection A of § 33.2-1915, the governing body of each participating county or city is not limited to appointing commissioners from among its members. In addition, the governing body may appoint, from its number or otherwise, designated alternate members for those appointed to the commission who shall be able to exercise all of the powers and duties of a commission member when the regular member is absent from commission meetings. Each such appointee shall serve at the pleasure of the appointing body; however, no appointee to a commission with powers as set forth in subsection B of § 33.2-1915 may continue to serve when he is no longer a member of the appointing body. Each governing body shall inform the commission of its appointments to and removals from the commission by delivering to the commission a certified copy of the resolution making the appointment or causing the removal.

The Chairman of the Commonwealth Transportation Board, or his designee, shall be a member of each commission, ex officio with voting privileges. The Chairman of the Commonwealth Transportation Board may appoint an alternate member who may exercise all the powers and duties of the Chairman of the Commonwealth Transportation Board when neither the Chairman of the Commonwealth Transportation Board nor his designee is present at a commission meeting.

The Potomac and Rappahannock Transportation Commission shall also include two members of the House of Delegates and one member of the Senate from legislative districts located wholly or in part within the boundaries of the transportation district. The members of the House of Delegates shall be appointed by the Speaker of the House for terms coincident with their terms of office, and the member of the Senate shall be appointed by the Senate Committee on Rules for a term coincident with his term of office. The members of the General Assembly shall be eligible for reappointment for successive terms. Vacancies occurring other than by expiration of a term shall be filled for the unexpired term. Vacancies shall be filled in the same manner as the original appointments.

The Transportation District Commission of Hampton Roads shall consist of one nonlegislative citizen member appointed by the Governor from each county and city embraced by the transportation district. The governing body of each such county or city may appoint either a member of its governing body or its county or city manager to serve as an ex officio member with voting privileges. Every such ex officio member shall be allowed to attend all meetings of the commission that other members may be required to attend. Vacancies shall be filled in the same manner as the original appointments.

B. Any appointed member of the Northern Virginia Transportation Commission and the Secretary or his designee is authorized to serve as a member of the board of directors of the Washington Metropolitan Area Transit Authority (Chapter 627 of the Acts of Assembly of 1958, as amended) and while so serving the provisions of § 2.2-2800 shall not apply to such member. In appointing Virginia members of the board of directors of the Washington Metropolitan Area Transit Authority (WMATA), the Northern Virginia Transportation Commission shall include the Secretary or his designee as a principal member on the board of directors of WMATA. Any designee serving as the principal member must reside in a locality served by WMATA.

In selecting from its membership those members to serve on the board of directors of WMATA, the Northern Virginia Transportation Commission shall comply with the following requirements:

1. A board member shall not have been an employee of WMATA within one year of appointment to serve on the board of directors.

2. A board member shall have (i) experience in at least one of the fields of transit planning, transportation planning, or land use planning; transit or transportation management or other public sector management; engineering; finance; public safety; homeland security; human resources; or the law or (ii) knowledge of the region's transportation issues derived from working on regional transportation issue resolution.

3. A board member shall be a regular patron of the services provided by WMATA.

4. Board members shall serve a term of four years with a maximum of two consecutive terms. A board member's term or terms must coincide with his term on the body that appointed him to the Northern Virginia Transportation Commission. Any vacancy created if a board member cannot fulfill his term because his term on the appointing body has ended shall be filled for the unexpired term in the same manner as the member being replaced was appointed within 60 days of the vacancy. The initial appointments to a four-year term will be as follows: the Secretary, or his designee, for a term of four years; the second principal member for a term of three years; one alternate for a term of two years; and the remaining alternate for a term of one year. Thereafter, board members shall be appointed for terms of four years. Service on the WMATA board of directors prior to July 1, 2012, shall not be considered in determining length of service. Any person appointed to an initial one-year or two-year term, or appointed to an unexpired term in which two years or less is remaining, shall be eligible to serve two consecutive four-year terms after serving the initial or unexpired term.

5. Members may be removed from the board of directors of WMATA if they attend fewer than three-fourths of the meetings in a calendar year; if they are conflicted due to employment at WMATA; or if they are found to be in violation of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.). If a board member is removed during a term, the vacancy shall be filled pursuant to the provisions of subdivision 4.

6. Each member of the Northern Virginia Transportation Commission appointed to the board of directors of WMATA shall file semiannual reports with the Secretary's office beginning July 1, 2012. The reports shall include (i) the dates of attendance at WMATA board meetings, (ii) any reasons for not attending a specific meeting, and (iii) dates and attendance at other WMATA-related public events.

Any entity that provides compensation to a WMATA board member for his service on the WMATA board shall be required to submit on July 1 of each year to the Secretary the amount of that compensation. Such letter will remain on file with the Secretary's office and be available for public review.

C. When the Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission enter into an agreement to operate a commuter railway, the agreement governing the creation of the railway shall provide that the Chairman of the Commonwealth Transportation Board or his designee shall have one vote on the oversight board for the railway. For each year in which the state contribution to the railway is greater than or equal to the highest contribution from an individual locality, the total annual subsidy as provided by the member localities used to determine vote weights shall be recalculated to include the Commonwealth contributing an amount equal to the highest contributing locality. The vote weights shall be recalculated to provide the Chairman of the Commonwealth Transportation Board or his designee the same weight as the highest contributing locality. The revised vote weights shall be used in determining the passage of motions before the oversight board.

§ 33.2-1908. Officers of commission.

Within 30 days after the appointment of the original commission members, the commission shall meet on the call of any member and shall elect one of its members as chairman and another as vice-chairman, each to serve for a term of one year or until his successor is elected and qualified. The commission shall employ a secretary and treasurer, who may or may not be a member of the commission, and, if not a commission member, fix his compensation and duties. All officers shall be eligible for reelection. Each commission member, before entering on the performance of his public duties, shall take and subscribe the oath or affirmation specified in Article II, Section 7 of the Constitution of Virginia. Such oath may be administered by any person authorized to administer oaths under § 49-4.

§ 33.2-1909. Bonds of members.

Each commission member shall, before entering upon the discharge of his duties under this chapter, give bond payable to the Commonwealth in a form approved by the Attorney General, in such penalty as fixed by the Governor, with some surety or guaranty company authorized to do business in the Commonwealth and approved by the Governor, as security, conditioned upon the faithful discharge of his duties. The premium of such bonds shall be paid by the commission and the bonds shall be filed with and preserved by the Department of the Treasury's Division of Risk Management.

§ 33.2-1910. Compensation and expenses of members.

The commission members shall receive no salary but shall be entitled to reimbursement of all reasonable and necessary expenses and compensation allowed members of the Commonwealth Transportation Board for the performance of their official duties as provided in §§ 2.2-2813 and 2.2-2825.

§ 33.2-1911. Meetings of commission.

Regular meetings of the commission shall be held at least once every month at such time and place as the commission shall prescribe. Special meetings of the commission shall be held upon mailed notice, or actual notice otherwise given, to each commission member upon call of the chairman or any two commission members, at such time and in such place within the district as such notice may specify, or at such other time and place with or without notice as all commission members may expressly approve. All regular and special meetings of the commission shall be open to the public, but the public shall not be entitled to any notice other than provided in this section. Unless a meeting is called for the purpose of a public hearing, members of the public shall have no right to be heard or otherwise participate in the proceedings of the meeting, except to the extent the chairman may in specific instances grant. All commission records shall be public records.

§ 33.2-1912. Quorum and action by commission.

A majority of the commission, which majority shall include at least one commissioner from a majority of the component governments, shall constitute a quorum. Members of the commission who are members of the General Assembly shall not be counted in determining a quorum while the General Assembly is in session. The Chairman of the Commonwealth Transportation Board or his designee shall be included for the purposes of constituting a quorum. The presence of a quorum and a vote of the majority of the members necessary to constitute a quorum of all the members appointed to the commission, including an affirmative vote from a majority of the members, shall be necessary to take any action. The Chairman of the Commonwealth Transportation Board or his designee shall have voting rights equal to appointees of component governments on all matters brought before the commission. Notwithstanding the provisions of § 2.2-3708, members of the General Assembly may participate in the meetings of the commission through electronic communications while the General Assembly is in session.

§ 33.2-1913. Funds of commission.

A. All moneys of a commission, whether derived from any contract of the commission or from any other source, shall be collected, received, held, secured, and disbursed in accordance with any relevant contract of the commission. This section shall apply to such moneys only if and to the extent they are consistent with such commission contracts.

B. Such moneys shall not be required to be paid into the state treasury or into the treasury or to any officer of any county or city.

C. All such moneys shall be deposited by the commission in a separate bank account, appropriately designated, in banks or trust companies designated by the commission.

§ 33.2-1914. Accounts and records.

Every commission shall keep and preserve complete and accurate accounts and records of all moneys received and disbursed; business and operations; and all property and funds it owns, manages, or controls. Each commission shall prepare and transmit to the Governor and to the governing body of each county and city within the district, annually and at such other times as the Governor requires, complete and accurate reports of the state and content of such accounts and records, together with other relevant information as the Governor may require.

Article 4.

Powers and Functions of Commission.

§ 33.2-1915. Powers and functions generally.

A. Notwithstanding any other contrary provision of law, a commission shall, except as provided in subsection B, have the following powers and functions:

1. The commission shall prepare the transportation plan for the transportation district and shall revise and amend the plan in accordance with the planning process and procedures specified in Article 7 (§ 33.2-1928 et seq.).

2. The commission may, when a transportation plan is adopted according to Article 7, construct or acquire, by purchase or lease, the transportation facilities specified in such transportation plan.

3. The commission may enter into agreements or leases with private companies for the operation of its facilities or may operate such facilities itself.

4. The commission may enter into contracts or agreements with the counties and cities within the transportation district, with counties and cities that adjoin the transportation district and are within the same planning district, or with other commissions of adjoining transportation districts to provide, or cause to be provided, transit facilities and service to such counties and cities or to provide transit facilities and other modes of transportation between adjoining transportation districts. Such contracts or agreements, together with any agreements or leases for the operation of such facilities, may be utilized by the transportation district to finance the construction and operation of transportation facilities, and such contracts, agreements, or leases shall inure to the benefit of any creditor of the transportation district.

However, except in any transportation district containing any or all of the Counties of Chesterfield, Hanover, and Henrico or the City of Richmond, being so delegated by the respective local governments, the commission shall not have the power to regulate services provided by taxicabs, either within municipalities or across municipal boundaries, which regulation is expressly reserved to the municipalities within which taxicabs operate. In any transportation district containing any or all of the Counties of Chesterfield, Hanover, and Henrico or the City of Richmond, the commission may, upon proper authority granted by the respective component governments, regulate services provided by taxicabs, either within localities or across county or city boundaries.

B. The Northern Virginia Transportation Commission:

1. Shall not prepare a transportation plan or construct or operate transit facilities, but shall collaborate and cooperate in the manner specified in Article 7 (§ 33.2-1928 et seq.) with an agency in preparing, revising, and amending a transportation plan for such metropolitan area.

2. Shall, according to Article 7 (§ 33.2-1928 et seq.) and in cooperation with the governing bodies of the component governments embraced by the transportation district, formulate the tentative policy and decisions of the transportation district with respect to the planning, design, location, construction, operation, and financing of transportation facilities.

3. May, when a transportation plan applicable to such a transportation district is adopted, enter into contracts or agreements with an agency to contribute to the capital required for the construction or acquisition of transportation facilities and for meeting expenses and obligations in the operations of such facilities.

4. May, when a transportation plan applicable to such transportation district is adopted, enter into contracts or agreements with the counties and cities within the transportation district to provide or cause to be provided transportation facilities and service to such counties and cities.

5. Notwithstanding any other provision in this section to the contrary:

a. May acquire land or any interest therein by purchase, lease, gift, condemnation, or otherwise and provide transportation facilities thereon for use in connection with any transportation service;

b. May acquire land or any interest therein by purchase, lease, gift, condemnation, or otherwise in advance of need for sale or contribution to an agency, for use by that agency in connection with an adopted mass transit plan;

c. May, in accordance with the terms of any grant from or loan by the United States of America or the Commonwealth, or any agency or instrumentality thereof, or when necessary to preserve essential transportation service, acquire transit facilities or any carrier that is subject to the jurisdiction of the Washington Metropolitan Area Transit Commission by acquisition of the capital stock or transit facilities and other assets of any such carrier and shall provide for the performance of transportation by any such carrier or with such transit facilities by contract or lease. However, the contract or lease shall be for a term of no more than one year, renewable for additional terms of similar duration, and, in order to assure acceptable fare levels, may provide for financial assistance by purchase of service, operating subsidies, or otherwise. No such service shall be rendered that will adversely affect transit service rendered by the transit facilities owned or controlled by the agency or any existing private transit or transportation company. When notified by the

agency that it is authorized to perform or cause to be performed transportation services with motor vehicle facilities, the commission, upon request by the agency, shall transfer such capital stock or transit facilities to the agency at a price to be agreed upon; and

d. May prepare a plan for mass transportation services with cities, counties, agencies, authorities, or commissions and may further contract with transportation companies, cities, counties, commissions, authorities, agencies, and departments of the Commonwealth and appropriate agencies of the federal government or governments contiguous to the Commonwealth to provide necessary facilities, equipment, operations and maintenance, access, and insurance pursuant to such plan.

C. The provisions of subdivisions B 1 through 4 and subdivisions B 5 b and c shall not apply (i) to any transportation district that may be established on or after July 1, 1986, and that includes any one or more localities that are located within a metropolitan area, but that were not, on January 1, 1986, members of any other transportation district or (ii) to any locality that, after July 1, 1989, joins a transportation district that was established on or before January 1, 1986. The provisions of this subsection shall apply only to any transportation district or locality that is contiguous to the Northern Virginia Transportation District. Any such district or locality shall be subject to the provisions of subsection A and further may exercise the powers granted by subdivision B 5 a to acquire land or any interest therein by purchase, lease, gift, condemnation, or otherwise and provide transportation facilities thereon for use in connection with any transportation service.

D. Until such time as a commission enters into contracts or agreements with its component governments under the provisions of subdivisions A 4 and B 4 and is receiving revenues thereunder adequate to meet the administrative expenses of the commission after paying or providing for the payment of the obligations arising under said subdivisions, the administrative expenses of the commission shall be borne by the component governments in the manner set forth in this section. The commission annually shall submit to the governing bodies of the component counties and cities a budget of its administrative requirements for the next year.

E. The administrative expenses of the Northern Virginia Transportation Commission, to the extent funds for such expenses are not provided from other sources, shall be allocated among the component governments on the basis of population as reflected by the latest population statistics of the U.S. Census Bureau; however, upon the request of any component government, the commission shall make the allocation upon estimates of population prepared in a manner approved by the commission and by the governing body of the component government making such request. The administrative expenses of the Northern Virginia Transportation Commission, to the extent funds for such expenses are not provided from other sources, shall be allocated among the component governments on the basis of the relative shares of state and federal transit aids allocated by the Commission among its component governments. Such budget shall be limited solely to the administrative expenses of the Commission and shall not include any funds for construction or acquisition of transportation facilities or the performing of transportation service. In addition, the Northern Virginia Transportation Commission annually shall submit to the governing bodies of the component counties and cities a budget of its other expenses and obligations for the ensuing year. Such expenses and obligations shall be borne by the component counties and cities in accordance with prior arrangements made therefor.

F. When a transportation plan has been adopted under subdivision A 4 of § 33.2-1929, the commission shall determine the equitable allocation among the component governments of the costs incurred by the district in providing the transportation facilities proposed in the transportation plan and any expenses and obligations from the operation thereof to be borne by each county and city. In making such determinations, the commission shall consider the cost of the facilities located within each county and city, the population of each county and city, the benefits to be derived by each county and city from the proposed transportation service, and all other factors that the commission determines to be relevant. Such determination, however, shall not create a commitment by the counties and cities, and such commitments shall be created only under the contracts or agreements specified in subdivisions A 4 and B 4.

§ 33.2-1916. Commission control of transportation district.

The commission may exercise exclusive control, notwithstanding any provision of law to the contrary, of matters of regulation of fares, schedules, franchising agreements, and routing of transit facilities within the boundaries of its transportation district; however, the provisions of § 5.1-7 shall be applicable to airport commissions.

§ 33.2-1917. Protection of employees of public transportation systems.

In any county or city, the commission referred to in § 33.2-1915, in addition to other prohibitions, shall not operate any such transit facility, or otherwise provide or cause to be provided any transportation services, unless fair and equitable arrangements have been made for the protection of employees of existing public transportation systems in the transportation district or in the metropolitan area in which the transportation district is located. Such protections shall include (i) assurances of employment to employees of such transportation systems to the fullest extent possible consistent with sound management, and priority of employment or, if terminated or laid off, reemployment; (ii) preservation of rights, privileges, and benefits, including continuation of pension rights and benefits, under existing collective bargaining agreements or otherwise; (iii) continuation of collective bargaining rights; (iv) protection of individual employees against a worsening of their positions with respect to their employment, to the extent provided by 49 U.S.C. § 5333(b), also known as § 13(c) of the Federal Transit Act; and (v) paid training and retraining programs. Such protections shall be specified by the commission in any contract or lease for the acquisition or operation of any such transit facilities or services. The employees of any transit facility operated by the commission shall have the right, in the case of any labor dispute relating to the terms and conditions of their employment for the purpose of resolving such dispute, to submit the dispute to final and binding arbitration by an impartial umpire or board of arbitration acceptable to the parties.

§ 33.2-1918. Background checks of applicants and employees.

A. Any commission created pursuant to this chapter may require any individual who is offered a position of employment with the commission, or with any contractor of the commission when such individual is to be assigned to directly provide transit services to the public under a contract with the commission, to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the individual's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such individual. The commission shall bear all costs of obtaining criminal history record information regarding such individual, including expenses incurred by the State Police in connection with such fingerprinting or criminal records check. The commission may require such individual or contractor to reimburse the commission for the cost of the fingerprinting or a criminal records check or both.

B. The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall make a report to the commission's chief administrative officer, who must belong to a governmental entity. The information shall not be disseminated except as provided for in this section.

§ 33.2-1919. Additional powers.

Without limiting or restricting the general powers created by this chapter, the commission may:

1. Adopt and have a common seal and alter the seal at pleasure;

2. Sue and be sued;

3. Make regulations for the conduct of its business;

4. Make and enter into all contracts or agreements, as the commission may determine, that are necessary or incidental to the performance of its duties and to the execution of the powers granted under this chapter;

5. Apply for and accept loans and grants of money or materials or property at any time from the United States of America or the Commonwealth or any agency or instrumentality thereof, for itself or as an agent on behalf of the component governments or any one or more of them, and in connection therewith purchase or lease as lessor or lessee any transit facilities required under the terms of any such grant made to enable the commission to exercise its powers under subdivision B 5 of § 33.2-1915;

6. In the name of the commission, and on its behalf, acquire, hold, and dispose of its contract or other revenues;

7. Exercise any power usually possessed by private corporations, including the right to expend, solely from funds provided under this chapter, such funds as may be considered by the commission to be advisable or necessary in the performance of its duties and functions;

8. Employ engineers, attorneys, other professional experts and consultants, and general and clerical employees deemed necessary and prescribe their powers and duties and fix their compensation;

9. Do anything authorized by this chapter under, through, or by its own officers, agents, and employees, or by contracts with any persons;

10. Execute instruments and do anything necessary, convenient, or desirable for the purposes of the commission or to carry out the powers expressly given in this chapter;

11. Institute and prosecute any eminent domain proceedings to acquire any property authorized to be acquired under this title in accordance with the provisions of Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 and subject to the approval of the State Corporation Commission pursuant to § 25.1-102;

12. Invest in if required as a condition to obtaining insurance, participate in, or purchase insurance provided by foreign insurance companies that insure railroad operations, provided this power is available only to those commissions that provide rail services;

13. Notwithstanding the provisions of § 8.01-195.3, contract to indemnify, and to obtain liability insurance to cover such indemnity, any person who is liable, or who may be subjected to liability, regardless of the character of the liability, as a result of the exercise by a commission of any of the powers conferred by this chapter. No obligation of a commission to indemnify any such person shall exceed the combined maximum limits of all liability policies, as defined in subsection C of § 33.2-1927, maintained by the commission; and

14. Notwithstanding any other contrary provision of law, regulate traffic signals and other traffic control devices within the district, through the use of computers and other electronic communication and control devices, so as to effect the orderly flow of traffic and to improve transportation services within the district; however, an agreement concerning the operation of traffic control devices acceptable to all parties shall be entered into between the commission and the Department and all the counties and cities within the transportation district prior to the commencement of such regulation.

Article 5.

Financing.

§ 33.2-1920. Authority to issue bonds and other obligations.

A. 1. A transportation district may issue bonds or other interest-bearing obligations, as provided in this chapter, for any of its purposes and pay the principal and interest thereon from any of its funds, including any moneys paid to or otherwise received by the district pursuant to any law enacted or any contract or agreement or any grant, loan, or contribution authorized by this chapter. For the purposes of this chapter, bonds include bonds, notes, and other interest-bearing obligations, including notes issued in anticipation of the sale and issuance of bonds.

2. Neither the members of a transportation district nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of a district (and such bonds and obligations shall so state on their face) shall not be a debt of the Commonwealth or any political subdivision thereof, and only the district shall be liable thereon. The bonds shall not constitute an indebtedness within the meaning of any debt limitation or restriction except as provided under this section.

B. 1. Bonds of a transportation district shall be authorized by resolution, may be issued in one or more series, shall be dated, shall mature at such times not exceeding 40 years from their dates, shall bear interest at rates determined by the commission, and may be made redeemable before maturity, at the option of the commission at such price or prices and under such terms as the commission fixes prior to issuing the bonds. The commission shall determine the form of the bonds, including any interest coupons to be attached and the manner of execution of the bonds, and shall fix the denominations of the bonds and the places of payment of principal and interest, which may be at any bank or trust company within or outside the Commonwealth. If any officer whose signature or facsimile signature appears on any bonds or coupons ceases to be such officer before delivery of such bond, such signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any other provisions of this article or any recitals in any bonds issued under the provisions of this article, all such bonds shall be negotiable instruments under the laws of the Commonwealth. The bonds may be issued in coupon or registered form or both, as the commission may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The transportation district may sell such bonds in such manner, either at public or private sale, and for such price as it may determine to be for the best

interests of the district. A transportation district is authorized to enter into indentures or agreements with respect to all such matters, and such indentures or agreements may contain such other provisions as the commission may deem reasonable and proper for the security of the bondholders. The resolution may provide that the bonds shall be payable from and secured by all or any part of the revenues, moneys, or funds of the district as specified therein. Such pledge shall be valid and binding from the time the pledge is made, and such revenues, moneys, and funds so pledged and thereafter received by the district shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act. The lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the district, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust indenture by which a pledge is created need be filed or recorded except in the records of the district. All expenses incurred in carrying out the provisions of such indentures or agreements may be treated as a purpose of the transportation district. A transportation district may issue refunding bonds for the purpose of redeeming or retiring any bonds before or at maturity, including the payment of any premium, accrued interest, and costs or expenses thereof.

2. Prior to the preparation of definitive bonds a transportation district may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. A transportation district may also provide for the replacement of any bonds that have been mutilated, destroyed, or lost.

3. Bonds may be issued pursuant to this article without obtaining the consent of any commission, board, bureau, or agency of the Commonwealth or of any governmental subdivision, and without any referendum, other proceedings, or the happening of other conditions except for those proceedings or conditions that are specifically required by this article.

C. Any holder of bonds, notes, certificates, or other evidence of borrowing issued under this article or of any of the coupons appertaining thereto, and the trustee under any trust indenture or agreement, except to the extent of the rights given in this article may be restricted by such trust indenture or agreement, may, either at law or in equity, by suit, action, injunction, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the Commonwealth or granted by this article or under such trust indenture or agreement or the resolution authorizing the issuance of such bonds, notes, or certificates, and may enforce and compel the performance of all duties required by this article or by such trust indenture or agreement or resolution to be performed by the transportation district or by any officer or agent thereof.

D. The exercise of the powers granted by this article shall be in all respects for the benefit of the inhabitants of the Commonwealth, for the promotion of their safety, health, welfare, convenience, and prosperity, and any facility or service that a transportation district is authorized to provide will constitute the performance of an essential governmental function. The bonds of a district are declared to be issued for an essential public and governmental purpose and their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any governmental subdivision thereof.

E. Bonds issued by a transportation district under this article are securities in which all public officers and public bodies of the Commonwealth and its governmental subdivisions and all insurance companies, trust companies, banks, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are securities that may properly and legally be deposited with and received by any state or local officer or any agency or governmental subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations is now or may hereafter be authorized by law.

§ 33.2-1921. Judicial determination of validity of bonds.

The provisions of Article 6 (§ 15.2-2650 et seq.) of Chapter 26 of Title 15.2 apply to all suits, actions, and proceedings of whatever nature involving the validity of bonds issued by a transportation district under the provisions of this article.

Article 6.

Powers and Duties of Localities; Liability of Commonwealth and Localities.

§ 33.2-1922. Contracts and payment thereof.

A. Any county or city embraced by a transportation district is authorized to enter into contracts or agreements with the commission for such transportation district, or with an agency, pursuant to which such transportation district, subject to the limitations contained in this section, or such agency undertakes to provide the transportation facilities specified in a duly adopted transportation plan or to render transportation service. Any obligations arising from such contracts are deemed to be for a public purpose and may be paid for, in the discretion of each county or city, in whole or in part, by appropriations from general revenues or from the proceeds of a bond issue or issues; however, any such contract must specify the annual maximum obligation of any county or city for payments to meet the expenses and obligations of the transportation district or such agency or provide a formula to determine the payment of any such county or city for such expenses and obligations. Each county or city desiring to contract with a transportation district or an agency is authorized to do so, provided it complies with the appropriate provisions of law, and thereafter is authorized to do everything necessary or proper to carry out and perform every such contract and to provide for the payment or discharge of any obligation thereunder by the same means and in the same manner as any other of its obligations.

B. Except as otherwise provided by law:

1. No bonded debt shall be contracted by any county to finance the payment of any obligations arising from its contracts hereunder unless the voters of such county shall approve by a majority vote of the voters voting in an election the contracting of any such debt, the borrowing of money, and issuance of bonds. Such debt shall be contracted and bonds issued and such election shall be held in the manner provided in and subject to the provisions of the Public Finance Act (§ 15.2-2600 et seq.) relating to counties; and

2. The contracting of debt, borrowing of money, and issuance of bonds by any city to finance the payment of any obligations arising from its contracts hereunder shall be effected in the manner provided in and subject to the provisions of the Public Finance Act (§ 15.2-2600 et seq.) relating to cities.

§ 33.2-1923. Venue.

Every such contract shall be enforceable by the transportation district with which the contract is made, as provided under the laws of the Commonwealth, and, if any such contract is entered into with an agency or is relied upon in a contract between a commission and any such agency, the agency also shall have the right to enforce the contract. The venue for actions on any contract between a transportation district and a component government shall be as specified in subdivision 10 of § 8.01-261. Venue in all other matters arising hereunder shall be as provided by law.

§ 33.2-1924. Acquisition of median strips for transit facilities in interstate highways.

When the district commission, the Commonwealth Transportation Board, and the governing bodies of the component governments determine that the time schedule for construction of any interstate highway, as defined in § 33.2-100, within the district makes it necessary to acquire median strips for transit facilities in such highway prior to the adoption of a transportation plan, each county and city within the district is authorized to pay to the Commonwealth Transportation Board such sums as may be agreed upon among the district commission and such counties and cities to provide the Commonwealth Transportation Board with the necessary matching funds to acquire the median strips. Any such acquisition shall be made by and in the name of the Commonwealth Transportation Board.

§ 33.2-1925. Appropriations.

The governing bodies of counties and cities participating in a transportation district are authorized to appropriate funds for the administrative and other expenses and obligations (i) of the commission of the transportation district, as provided in subsection D of § 33.2-1915, (ii) of an agency, and (iii) for such other purposes as may be specified in a law creating a transportation district.

§ 33.2-1926. Powers granted are in addition to all other powers.

The powers conferred by this chapter on counties and cities are in addition and supplemental to the powers conferred by any other law, and may be exercised by resolution or ordinance of the governing bodies thereof, as required by law, without regard to the terms, conditions, requirements, restrictions, or other provisions contained in any other law, general or special, or in any charter.

§ 33.2-1927. Liabilities of Commonwealth, counties, and cities.

A. Except for claims cognizable under the Virginia Tort Claims Act, Article 18.1 (§ 8.01-195.1 et seq.) of Chapter 3 of Title 8.01, no pecuniary liability of any kind shall be imposed on the Commonwealth or upon any county or city constituting any part of any transportation district because of any act, agreement, contract, tort, malfeasance, misfeasance, or nonfeasance by or on the part of the commission of such transportation district, or any commission member, or its agents, servants, and employees, except as otherwise provided in this chapter with reference to contracts and agreements between the commission or interstate agency and any county or city.

B. Except for claims cognizable under the Virginia Tort Claims Act, Article 18.1 (§ 8.01-195.1 et seq.) of Chapter 3 of Title 8.01, the obligations and any indebtedness of a commission shall not be in any way a debt or liability of the Commonwealth, or of any county or city in whole or in part embraced by the transportation district, and shall not create or constitute any indebtedness, liability, or obligation of the Commonwealth or of any such county or city, legal, moral, or otherwise, and nothing in this chapter contained shall be construed to authorize a commission or district to incur any indebtedness on behalf of or in any way to obligate the Commonwealth or any county or city in whole or in part embraced by the transportation district; however, any contracts or agreements between the commission and any county or city provided for in subdivisions A 4 and B 4 of § 33.2-1915 shall inure to the benefit of any creditor of the transportation district or, when applicable, to an agency as therein provided.

C. For purposes of this section, "liability policy," as it is used in the Virginia Tort Claims Act, specifically includes any program of self-insurance maintained by a district and administered by the Department of the Treasury's Division of Risk Management.

Article 7.

Planning Process and Procedures.

§ 33.2-1928. Planning process.

A. In performing the duties imposed under subsections A and B of § 33.2-1915, the commission shall cooperate with the governing bodies of the counties and cities embraced by the transportation district and agencies thereof, with the Commonwealth Transportation Board, and with an agency of which members of the district commission are also members, to the end that the plans, decisions, and policies for transportation shall be consistent with and shall foster the development and implementation of the general plans and policies of the counties and cities for their orderly growth and development.

B. Each commission member shall serve as the liaison between the commission and the body by which he was appointed, and those commission members who are also members of an agency shall provide liaison between the district commission and such agency, to the end that the district commission, its component governments, the Commonwealth Transportation Board, and any such agency shall be continuously, comprehensively, and mutually advised of plans, policies, and actions requiring consideration in the planning for transportation and in the development of planned transportation facilities.

C. To assure that planning, policy, and decision-making are consistent with the development plans for the orderly growth of the counties and cities and coordinated with the plans and programs of the Commonwealth Transportation Board and are based on comprehensive data with respect to current and prospective local conditions, including land use, economic and population factors, the objectives for future urban development, and future travel demands generated by such considerations, the commission may:

1. Create, subject to their appointment, technical committees from the personnel of the agencies of the counties and cities and from the Commonwealth Transportation Board concerned with planning, collection, and analysis of data relevant to decision-making in the transportation planning process. Appointments to such technical committees, however, are to be made by the governing bodies of the counties and cities and by the Commonwealth Transportation Board; or

2. If the transportation district is located within an area that has an organized planning process created in conformance with the provisions of 23 U.S.C. § 134, utilize the technical committees created for such planning process.

D. The commission, on behalf of the counties and cities within the transportation district, but only upon their direction, is authorized to enter into the written agreements specified in 23 U.S.C. § 134 to assure conformance with the requirements of that law for continuous, comprehensive transportation planning.

§ 33.2-1929. Procedures.

A. To ensure that the planning process specified in § 33.2-1928 is effectively and efficiently utilized, the commission shall conform to the following procedures and may prescribe such additional procedures as it deems advisable:

1. Commission meetings shall be held at least monthly and more often in the discretion of the commission, as the proper performance of its duties requires.

2. At such meetings the commission shall receive and consider reports from:

a. Its members who are also members of an agency, as to the status and progress of the work of such agency, and if the commission deems that such reports are of concern to them, shall fully inform its component governments, committees, and the Commonwealth Transportation Board with respect thereto, as a means of developing the informed views requisite for sound policy-making; and

b. Its members, technical and other committees, members of the governing bodies of the component governments, and consultants, presenting and analyzing studies and data on matters affecting the making of policies and decisions on a transportation plan and the implementation thereof.

3. The objective of the procedures specified in this section is to develop agreement, based on the best available information, among the district commission, the governing bodies of the component governments, the Commonwealth Transportation Board, and an interstate agency with respect to the various factors that affect the making of policies and decisions relating to a transportation plan and the implementation thereof. If any material disagreements occur in the planning process with respect to objectives and goals, the evaluation of basic data, or the selection of criteria and standards to be applied in the planning process, the commission shall exert its best efforts to bring about agreement and understanding on such matters. The commission may hold hearings in an effort to resolve any such basic controversies.

4. Before a transportation plan is adopted, altered, revised, or amended by the commission or by an agency on which it is represented, the commission shall transmit such proposed plan, alteration, revision, or amendment to the governing bodies of the component governments, to the Commonwealth Transportation Board, and to its technical committees and shall release to the public information with respect thereto. A copy of the proposed transportation plan, amendment, or revision shall be kept at the commission office and shall be available for public inspection. Upon 30 days' notice, published once a week for two successive weeks in one or more newspapers of general circulation within the transportation district, a public hearing shall be held on the proposed plan, alteration, revision, or amendment. The 30 days' notice period shall begin to run on the first day the notice appears in any such newspaper. The commission shall consider the evidence submitted and statements and comments made at such hearings and, if objections in writing to the whole or any part of the plan are made by the governing body of any component government, or by the Commonwealth Transportation Board, or if the commission considers any written objection made by any other person, group, or organization to be sufficiently significant, the commission shall reconsider the plan, alteration, revision, or amendment. If, upon reconsideration, the commission agrees with the objection, then the commission shall make appropriate changes to the proposed plan, alteration, revision, or amendment and may adopt them without further hearing. If, upon reconsideration, the commission disagrees with the objection, the commission may adopt the plan, alteration, revision, or amendment. No facilities shall be located in and no service rendered, however, within any county or city that does not execute an appropriate agreement with the commission or with an interstate agency as provided in § 33.2-1922; but in such case, the commission shall determine whether the absence of such an agreement so materially and adversely affects the feasibility of the transportation plan as to require its modification or abandonment.

Article 8.

Enlargement of Transportation Districts.

§ 33.2-1930. Procedure for enlargement.

A transportation district may be enlarged to include any additional county or part thereof, or city or part thereof, contiguous thereto, upon such terms and conditions, consistent with the provisions of this chapter, as

may be agreed upon by the commission and such additional county or city and in conformance with the following procedures. The governing body of the county or city shall adopt an ordinance specifying the area to be enlarged, containing the finding specified in § 33.2-1903 and a statement that a contract or agreement between the county or city and the commission specifying the terms and conditions of admittance to the transportation district has been executed. The ordinance, to which shall be attached a certified copy of the contract, shall be filed with the Secretary of the Commonwealth. Upon certification by the Secretary of the Commonwealth to the Tax Commissioner, the commissioner, and the governing bodies of each of the component counties and cities that the ordinance required by this section has been filed and that its terms conform to the requirements of this section, the additional county or part thereof, or city or part thereof, upon the entry of such certification in the minutes of the proceedings of the governing body of such county or city, shall become a component government of the transportation district and part of the transportation district.

Article 9.

Withdrawal from Transportation District.

§ 33.2-1931. Resolution or ordinance.

A county or city may withdraw from the transportation district by resolution or ordinance, as may be appropriate, adopted by a majority vote of its governing body. The withdrawal of any county or city shall not be effective until the resolution or ordinance of withdrawal is filed with the transportation district commission and with the Secretary of the Commonwealth.

§ 33.2-1932. Financial obligations.

The withdrawal from the transportation district of any county or city shall not relieve the county or city from any obligation or commitment made or incurred while a district member.

Article 10.

Exemption from Taxation; Tort Liability.

§ 33.2-1933. Public purpose; exemption from taxation.

It is hereby found, determined, and declared that the creation of any transportation district hereunder and the carrying out of the corporate purposes of any such transportation district is in all respects for the benefit of the people of the Commonwealth and is a public purpose and that the transportation district and the commission will be performing an essential governmental function in the exercise of the powers conferred by this chapter. Accordingly, the transportation district shall not be required to pay taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation and maintenance of any transportation facilities or upon any revenues therefrom, and the property and the income derived therefrom shall be exempt from all state, municipal, and local taxation. This exemption shall include all motor vehicle license fees, motor vehicle sales and use taxes, retail sales and use taxes, and motor fuel taxes. The governing body of any political subdivision within a transportation district may refund in whole or in part any payments for taxes or license fees or abate in whole or in part any assessments for taxes or license fees on any property exempt from taxation or license fees under this section that were assessed and levied prior to the acquisition of any transportation facilities by a transportation district.

§ 33.2-1934. Liability for torts.

Every district shall be liable for its torts and those of its officers, employees, and agents committed in the conduct of any proprietary function but shall not be liable for any torts occurring in the performance of a governmental function. However, this section shall not apply to a transportation district subject to the provisions of the Virginia Tort Claims Act (§ 8.01-195.1 et seq.).

Article 11.

Construction of Chapter.

§ 33.2-1935. Liberal construction.

This chapter, being necessary for the welfare of the Commonwealth and its inhabitants, shall be liberally construed to effect the purposes thereof.

CHAPTER 20.

LOCAL TRANSPORTATION DISTRICTS.

§ 33.2-2000. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Commission" means the governing body of a local transportation district created pursuant to this chapter.

"Cost" means all or any part of the cost of the following:

1. Acquisition, construction, reconstruction, alteration, landscaping, utilities, parking, conservation, remodeling, equipping, or enlarging of transportation improvements or any portion thereof;

2. Acquisition of land, rights-of-way, property rights, easements, and interests for construction, alteration, or expansion of transportation improvements;

3. Demolishing or relocating any structure on land so acquired, including the cost of acquiring any lands to which such structure may be relocated;

4. All labor, materials, machinery, and equipment necessary or incidental to the construction or expansion of a transportation improvement;

5. Financing charges, insurance, interest, and reserves for interest on all bonds prior to and during construction and, if deemed advisable by the commission, for a reasonable period after completion of such construction;

6. Reserves for principal and interest;

7. Reserves for extensions, enlargements, additions, replacements, renovations, and improvements;

8. Provisions for working capital;

9. Engineering and architectural expenses and services, including surveys, borings, plans, and specifications;

10. Subsequent addition to or expansion of any project and the cost of determining the feasibility or practicability of such construction;

11. Financing construction of, addition to, or expansion of transportation improvements and placing them in operation; and

12. Expenses incurred in connection with the creation of the district, not to exceed $150,000.

"District" means any district created pursuant to this chapter.

"District advisory board" or "advisory board" means the board appointed pursuant to this chapter.

"Federal agency" means the United States of America or any department, bureau, agency, or instrumentality thereof.

"Locality" means any county or city.

"Owner" or "landowner" means the person that has the usufruct, control, or occupation of the taxable real property as determined, pursuant to § 58.1-3281, by the commissioner of the revenue of the locality in which the subject real property is located.

"Revenue" means any or all fees, tolls, rents, receipts, assessments, taxes, money, and income derived by the district, including any cash contribution or payments made to the district by the Commonwealth, any political subdivision thereof, or any other source.

"Transportation improvements" means any real or personal property acquired, constructed, improved, or used in constructing or improving any (i) public mass transit system or (ii) highway, or portion or interchange thereof, including parking facilities located within a district created pursuant to this chapter. Such improvements include public mass transit systems, public highways, and all buildings, structures, approaches, and facilities thereof and appurtenances thereto, rights-of-way, bridges, tunnels, stations, terminals, and all related equipment and fixtures.

§ 33.2-2001. Creation of district.

A. A district may be created in a single locality or in two or more contiguous localities. If created in a single locality, a district shall be created by a resolution of the local governing body. If created in two or more contiguous localities, a district shall be created by the resolutions of each of the local governing bodies. Any such resolution shall be considered only upon the petition, to each local governing body of the locality in which the proposed district is to be located, of the owners of at least 51 percent of either the land area or the assessed value of land in each locality that (i) is within the boundaries of the proposed district and (ii) has been zoned for commercial or industrial use or is used for such purposes. Any proposed district within a

county or counties may include any land within a town or towns within the boundaries of such county or counties.

B. The petition to the local governing body or bodies shall:

1. Set forth the name and describe the boundaries of the proposed district;

2. Describe the transportation improvements proposed within the district;

3. Propose a plan for providing such transportation improvements within the district and describe specific terms and conditions with respect to all commercial and industrial zoning classifications and uses, densities, and criteria related thereto which the petitioners request for the proposed district;

4. Describe the benefits that can be expected from the provision of such transportation improvements within the district; and

5. Request the local governing body or bodies to establish the proposed district for the purposes set forth in the petition.

C. Upon the filing of such a petition, each local governing body shall fix a day for a hearing on the question of whether the proposed district shall be created. The hearing shall consider whether the residents and owners of real property within the proposed district would benefit from the establishment of the proposed district. All interested persons who either reside in or own taxable real property within the proposed district shall have the right to appear and show cause why any property or properties should not be included in the proposed district. If real property within a town is included in the proposed district, the governing body shall deliver a copy of the petition and notice of the public hearing to the town council at least 30 days prior to the public hearing, and the town council may by resolution determine if it wishes such property located within the town to be included within the proposed district and shall deliver a copy of any such resolution to the local governing body at the public hearing required by this section. Such resolution shall be binding upon the local governing body with respect to the inclusion or exclusion of such properties within the proposed district. The petition shall comply with the provisions of this section with respect to minimum acreage or assessed valuation. Notice of the hearing shall be given by publication once a week for three consecutive weeks in a newspaper of general circulation within the locality. At least 10 days shall intervene between the third publication and the date set for the hearing.

D. If each local governing body finds the creation of the proposed district would be in furtherance of the locality's comprehensive plan for the development of the area, in the best interests of the residents and owners of real property within the proposed district, and in furtherance of the public health, safety, and welfare, then each local governing body may pass a resolution, which shall be reasonably consistent with the petition, creating the district and providing for the appointment of an advisory board in accordance with this chapter. The resolution shall provide a description with specific terms and conditions of all commercial and industrial zoning classifications that shall be in force in the district upon its creation, together with any related criteria and a term of years, not to exceed 20 years, as to which each zoning classification and each related criterion set forth therein shall remain in force within the district without elimination, reduction, or restriction, except (i) upon the written request or approval of the owner of any property affected by a change or (ii) as specifically required to comply with state or federal law.

Each resolution creating a district shall also provide (a) that the district shall expire 35 years from the date upon which the resolution is passed or (b) that the district shall expire when the district is abolished in accordance with § 33.2-2014. After the public hearing, each local governing body shall deliver a certified copy of its proposed resolution creating the district to the petitioning landowners or their attorneys-in-fact. Any petitioning landowner may then withdraw his signature on the petition, in writing, at any time prior to the vote of the local governing body. In the case where any signatures on the petition are withdrawn, the local governing body may pass the proposed resolution only upon certification that the petition continues to meet the provisions of this section. After all local governing bodies have adopted resolutions creating the district, the district shall be established and the name of the district shall be "The ..... Transportation Improvement District."

§ 33.2-2002. Commission to exercise powers of the district.

The powers of a district created pursuant to this chapter shall be exercised by a commission. The commission shall consist of four members of the governing body of each locality in which the district is

located, appointed by their respective local governing bodies. In addition to the members from each locality, the Chairman of the Commonwealth Transportation Board or his designee shall be a member of the commission of any district created pursuant to this chapter.

The commission shall elect a chairman from its membership. The chairman may be the chairman or presiding officer of a local governing body. In addition, the commission, with the advice of the district advisory board, shall elect a secretary and a treasurer, who may be members or employees of any local governing body or other governmental body. The offices of secretary and treasurer may be combined. A majority of the commission members shall constitute a quorum, and a majority vote shall be necessary for any action taken by the commission. No vacancy in the membership of the commission shall impair the right of a majority of the members to form a quorum or to exercise all of its rights, powers, and duties.

§ 33.2-2003. Powers and duties of commission.

The commission shall:

1. Construct, reconstruct, alter, improve, expand, make loans or otherwise provide financial assistance to, and operate transportation improvements in the district for the use and benefit of the public.

2. Acquire by gift, purchase, lease, in-kind contribution to construction costs, or otherwise any transportation improvements in the district and sell, lease as lessor, transfer, or dispose of any part of any transportation improvements in such manner and upon such terms as the commission may determine to be in the best interests of the district. However, prior to disposing of any such property or interest therein, the commission shall conduct a public hearing with respect to such disposition. At the hearing, the residents and owner of property within the district shall have an opportunity to be heard. At least 10 days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in the district, as prescribed by the commission. Such public hearing may be adjourned from time to time.

3. Negotiate and contract with any person with regard to any matter necessary and proper to provide any transportation improvements, including the financing, acquisition, construction, reconstruction, alteration, improvement, expansion, or maintenance of any transportation improvements in the district.

4. Enter into a continuing service contract for a purpose authorized by this chapter and make payments of the proceeds received from the special taxes levied pursuant to this chapter, together with any other revenues, for installments due under that service contract. The district may apply such payments annually during the term of that service contract in an amount sufficient to make the installment payments due under that contract, subject to the limitation imposed by this chapter. However, payments for any such service contract shall be conditioned upon the receipt of services pursuant to the contract. Such a contract shall not obligate a locality to make payments for services of the district.

5. Accept the allocations, contributions, or funds of any available source or reimburse from any available source, including any person, for the whole or any part of the costs, expenses, and charges incident to the acquisition, construction, reconstruction, maintenance, alteration, improvement, or expansion of any transportation improvements in the district.

6. Contract for the extension and use of any public mass transit system or highway into territory outside the district on such terms and conditions as the commission determines.

7. Employ and fix the compensation of personnel who may be deemed necessary for the construction, operation, or maintenance of any transportation improvements in the district.

8. Have prepared an annual audit of the district's financial obligations and revenues, and upon review of such audit, request a tax rate adequate to provide tax revenues that, together with all other revenues, are required by the district to fulfill its annual obligations.

§ 33.2-2004. Appointment of district advisory boards.

Within 30 days after the establishment of a district under this chapter, the local governing body from each locality within which any portion of the district is located shall appoint six members to a district advisory board. Three of the six members from each locality shall be chosen by the local governing body from nominations submitted to the local governing body by the petitioners. All members shall own or represent commercially or industrially zoned property within the district. Each member shall be appointed for a term of four years, except the initial appointment of advisory board members shall provide that the terms of three of the members shall be for two years. If a vacancy occurs with respect to an advisory board member initially

appointed by a local governing body, or any successor of such a member, the local governing body shall appoint a new member who is a representative or owner of commercially or industrially zoned property within the local district. If a vacancy occurs with respect to an advisory board member initially nominated by the petitioners, or any successor thereof, the remaining advisory board members initially nominated by the petitioners, or their successors, shall nominate a new member for selection by the local governing body.

District advisory board members shall serve without pay, but the local governing body shall provide the advisory board with facilities for the holding of meetings, and the commission shall appropriate funds needed to defray the reasonable expenses and fees of the advisory board that shall not exceed $20,000 annually, including expenses and fees arising out of the preparation of the annual report. Such appropriations shall be based on an annual budget submitted by the board, and approved by the commission, sufficient to carry out its responsibilities under this chapter. The advisory board shall elect a chairman and a secretary and such other officers as it deems necessary. The advisory board shall fix the time for holding regular meetings, but it shall meet at least once every year. Special meetings of the advisory board shall be called by the chairman or by two members of the advisory board upon written request to the secretary of the advisory board. A majority of the members shall constitute a quorum.

The advisory board shall present an annual report to the commission on the transportation needs of the district and on the activities of the advisory board, and the advisory board shall present special reports on transportation matters as requested by the commission or the local governing body concerning taxes to be levied pursuant to this chapter.

§ 33.2-2005. Annual special improvements tax; use of revenues.

Upon the written request of the commission made concurrently to the local governing body or bodies pursuant to this chapter, each local governing body may levy and collect an annual special improvements tax on taxable real estate zoned for commercial or industrial use or used for such purposes and taxable leasehold interests in that portion of the improvement district within its jurisdiction. Notwithstanding the provisions of Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1, the tax shall be levied on the assessed fair market value of the taxable real property. The rate of the special improvements tax shall not be more than 20 cents ($0.20) per $100 of the assessed fair market value of any taxable real estate or the assessable value of taxable leasehold property as specified by § 58.1-3203; however, if all the owners in any district so request in writing, this limitation on rate shall not apply. Such special improvements taxes shall be collected at the same time and in the same manner as the locality's taxes are collected, and the proceeds shall be kept in a separate account. The effective date of the initial assessment shall be January 1 of the year following adoption of the resolution creating the district. All revenues received by each locality pursuant to such taxes shall be paid to or at the direction of the district commission for its use pursuant to this chapter.

§ 33.2-2006. Agreements with Commonwealth Transportation Board; payment of special improvements tax to Transportation Trust Fund.

A. The district may contract with the Commonwealth Transportation Board for the Commonwealth Transportation Board to perform any of the purposes of the district.

The district may agree by contract to pay all or a portion of the special improvements tax to the Commonwealth Transportation Board.

Prior to executing any such contract, the district shall seek the agreement of each local governing body creating the district that the locality's officer charged with the responsibility for preparing the locality's annual budget shall submit in the budget for each fiscal year in which any Commonwealth of Virginia Transportation Contract Revenue Bonds issued for such district are outstanding all amounts to be paid to the Commonwealth Transportation Board under such contract during such fiscal year.

If the amount required to be paid to the Commonwealth Transportation Board under the contract is not so paid for a period of 60 days after such amount is due, the Commonwealth Transportation Board shall, until such amount has been paid, withhold sufficient funds from funds appropriated and allocated, pursuant to Article 5 (§ 33.2-351 et seq.) of Chapter 3, to the highway construction district in which the transportation improvements covered by such contract are located or to such locality in which such transportation improvements are located and to use such funds to satisfy the contractual requirements.

B. While nothing in this chapter shall limit the authority of any locality to change the classification of property zoned for commercial or industrial use or used for such purpose upon the written request or approval of the owner of any property affected by such change after the effective date of any such contract, should a change in zoning classification so requested result in a shortfall in the total annual revenues from the imposition of the special improvements tax and the payments required to be made to the Commonwealth Transportation Board pursuant to the contract, the district shall request the local governing body to increase the rate of such tax by such amount up to the maximum authorized rate as may be necessary to prevent such shortfall. If, however, a deficit remains after any rezoning and adjustment of the tax rate or the rate is at the maximum authorized rate and cannot be increased, then the amount of funds otherwise appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project covered by such contract is located or to such county or counties in which such project is located shall be reduced by the amount of such deficit and used to satisfy the deficit.

§ 33.2-2007. Jurisdiction of localities and officers, etc., not affected.

Neither the creation of a district nor any other provision in this chapter shall affect the power, jurisdiction, or duties of the respective local governing bodies; sheriffs; treasurers; commissioners of the revenue; circuit, district, or other courts; clerks of any court; magistrates; or any other local or state officer in regard to the area embraced in any district or restrict or prevent any locality or town, or its governing body, from imposing and collecting taxes or assessments for public improvements as permitted by law. Any locality that creates a district pursuant to this chapter may obligate itself with respect to the zoning ordinances, zoning ordinance text, and regulations relating thereto for all commercial and industrial classifications within the district as provided in this chapter for a term not to exceed 20 years from the date on which such district is created.

§ 33.2-2008. Allocation of funds to districts.

The governing body of any locality in which a district has been created pursuant to this chapter may advance funds or provide matching funds from money not otherwise specifically allocated or obligated. Such funds may be received or generated from whatever source, including general revenues, special fees and assessments, state allocations, and contributions from private sources to a local district to assist the local district to undertake the transportation improvements for which it was created. To assist the district with an approved transportation improvement, the Commonwealth Transportation Board may allocate to a district created pursuant to this chapter only funds allocated, pursuant to Article 5 (§ 33.2-351 et seq.) of Chapter 3, and subsection A of § 58.1-638, to the construction districts and localities in which such transportation district is located.

§ 33.2-2009. Reimbursement for advances to district.

To the extent that a locality or town has made advances to the district, the commission shall direct the district treasurer to reimburse the locality or town from any district funds not otherwise specifically allocated or obligated.

§ 33.2-2010. Cooperation between districts and other political subdivisions.

Any district created pursuant to this chapter may enter into agreements with localities, towns, or other political subdivisions of the Commonwealth for joint or cooperative action in accordance with the authority contained in § 15.2-1300.

§ 33.2-2011. Tort liability.

No pecuniary liability of any kind shall be imposed upon the Commonwealth or any locality, town, or landowner therein because of any act, agreement, contract, tort, malfeasance, misfeasance, or nonfeasance by or on the part of a district or its agents, servants, or employees.

§ 33.2-2012. Approval by Commonwealth Transportation Board.

The district shall not construct or improve a transportation improvement without the approval of both the Commonwealth Transportation Board and the locality in which the transportation improvement will be located. At the request of the commission, the Commissioner of Highways may exercise the powers of condemnation provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, Article 1 (§ 33.2-1000 et seq.) of Chapter 10, or § 33.2-705 for the purpose of acquiring property for transportation improvements within the district.

Upon completion of such construction or improvement, the Commonwealth Transportation Board shall take any affected public highway into the appropriate state highway system for purposes of maintenance and subsequent improvements as necessary. Upon acceptance by the Commonwealth of such highway into a state highway system, all rights, title, and interest in the right-of-way and improvements of any affected highway shall vest in the Commonwealth. Upon completion of construction or improvement of a mass transit system, all rights, title, and interest in the right-of-way and improvements of such mass transit system shall vest in an agency or instrumentality of the Commonwealth designated by the Commonwealth Transportation Board.

§ 33.2-2013. Enlargement of local districts.

The district shall be enlarged by resolution of the local governing body upon the petitions of the district commission and the owners of at least 51 percent of either the land area or assessed value of land of the district within each locality and of at least 51 percent of either the land area or assessed value of land located within the territory sought to be added to the district. However, any such territory shall be contiguous to the existing district. The petition shall present the information required by § 33.2-2001. Upon receipt of such a petition, the locality shall use the standards and procedures provided in § 33.2-2001, except that the residents and owners of both the existing district and the area proposed for the enlargement shall have the right to appear and show cause why any property should not be included in the proposed district.

If the local governing body finds the enlargement of a local district would be in accordance with the applicable comprehensive plan for the development of the area, in the best interests of the residents and owners of the property within the proposed district, and in furtherance of the public health, safety, and general welfare, and if the local governing body finds that enlargement of the district does not limit or adversely affect the rights and interests of any party that has contracted with the district, the local governing body may pass a resolution providing for the enlargement of the district.

§ 33.2-2014. Abolition of local transportation districts.

A. Any district created pursuant to this chapter may be abolished by resolutions passed by each local governing body within whose locality any portion of the district lies, upon the joint petition of the commission and the owners of at least 51 percent of the land area located within the district in each locality. Joint petitions shall:

1. State whether the purposes for which the district was formed have been substantially achieved;

2. State whether all obligations incurred by the district have been fully paid;

3. Describe the benefits that can be expected from the abolition of the district; and

4. Request each affected local governing body to abolish the district.

B. Upon receipt of such a petition, each local governing body, in considering the abolition of the district, shall use the standards and procedures described in § 33.2-2001 mutatis mutandis, except that all interested persons who either reside on or who own real property within the boundaries of the district shall have the right to appear and show cause why the district should not be abolished.

C. If each local governing body finds that (i) the abolition of the district is in accordance with the applicable locality's comprehensive plan for the development of the area; (ii) the abolition of the district is in the best interests of the residents and owners of the property within the district; (iii) the abolition of the district is in furtherance of the public health, safety, and welfare; and (iv) all debts of the district have been paid and the purposes of the district either have been, or should not be, fulfilled or finds that each local governing body with the approval of the voters of each locality has agreed to assume the debts of the district, then each local governing body may pass a resolution abolishing the district and the district advisory board. Upon abolition of the district, the title to all funds and properties owned by the district at the time of such dissolution shall vest in the locality in which the district or portion thereof was located.

§ 33.2-2015. Chapter to constitute complete authority for acts authorized; liberal construction.

This chapter shall constitute complete authority for the district to take the actions authorized in this chapter. This chapter, being necessary for the welfare of the Commonwealth and its inhabitants, shall be liberally construed to effect its purposes. Any court test concerning the validity of any bonds that may be issued for transportation improvements made pursuant to this chapter may be determined pursuant to Article 6 (§ 15.2-2650 et seq.) of Chapter 26 of Title 15.2.

CHAPTER 21.

TRANSPORTATION DISTRICTS WITHIN CERTAIN COUNTIES.

§ 33.2-2100. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Commission" means the governing body of a local transportation improvement district created pursuant to this chapter.

"Cost" means all or any part of the following:

1. Acquisition, construction, reconstruction, alteration, landscaping, utilities, parking, conservation, remodeling, equipping, or enlarging of transportation improvements or any portion thereof;

2. Acquisition of land, rights-of-way, property rights, easements, and interests for construction, alteration, or expansion of transportation improvements;

3. Demolishing or relocating any structure on land so acquired, including the cost of acquiring any lands to which such structure may be relocated;

4. All labor, materials, machinery, and equipment necessary or incidental to the construction or expansion of a transportation improvement;

5. Financing charges, insurance, interest, and reserves for interest on all bonds prior to and during construction and, if deemed advisable by the commission, for a reasonable period after completion of such construction;

6. Reserves for principal and interest;

7. Reserves for extensions, enlargements, additions, replacements, renovations, and improvements;

8. Provisions for working capital;

9. Engineering and architectural expenses and services, including surveys, borings, plans, and specifications;

10. Subsequent addition to or expansion of any project and the cost of determining the feasibility or practicability of such construction;

11. Financing construction of, addition to, or expansion of transportation improvements and operating such improvements; and

12. Expenses incurred in connection with the creation of the district, not to exceed $150,000.

"County" means any county having a population of more than 500,000.

"District" means any transportation improvement district created pursuant to this chapter.

"District advisory board" or "advisory board" means the board appointed pursuant to § 33.2-2104.

"Federal agency" means the United States of America or any department, bureau, agency, or instrumentality thereof.

"Governing body" means the governing body of a county.

"Owner" or "landowner" means the person that is assessed with real property taxes pursuant to § 58.1-3281 by the commissioner of the revenue or other assessing officer of the locality in which the subject real property is located.

"Participating town" means a town that has real property within its boundaries included within a district created pursuant to this chapter.

"Revenue" means any or all fees, tolls, rents, receipts, assessments, taxes, money, and income derived by the district, including any cash contribution or payments made to the district by the Commonwealth, any political subdivision thereof, or any other source.

"Transportation improvements" means any real or personal property acquired, constructed, improved, or used for constructing, improving, or operating any (i) public mass transit system or (ii) highway, or portion or interchange thereof, including parking facilities located within a district created pursuant to this chapter. "Transportation improvements" includes public mass transit systems, public highways, and all buildings, structures, approaches, and facilities thereof and appurtenances thereto, rights-of-way, bridges, tunnels, stations, terminals, and all related equipment and fixtures.

§ 33.2-2101. Creation of district.

A. A district may be created in a county by a resolution of the governing body. Any such resolution shall be considered only upon the petition, to the governing body, of the owners of at least 51 percent of either the land area or the assessed value of real property that (i) is within the boundaries of the proposed district, (ii)

has been zoned for commercial or industrial use or is used for such purposes, and (iii) would be subject to the annual special improvement tax authorized by § 33.2-2105 if the proposed district is created. Any proposed district within a county may include any real property within a town or towns within the boundaries of such county.

B. The petition to the governing body shall:

1. Set forth the name and describe the boundaries of the proposed district;

2. Describe the transportation improvements proposed within the district;

3. Propose a plan for providing such transportation improvements within the district and describe specific terms and conditions with respect to all commercial and industrial zoning classifications and uses, densities, and criteria related thereto that the petitioners request for the proposed district;

4. Describe the benefits that can be expected from the provision of such transportation improvements within the district; and

5. Request the governing body to establish the proposed district for the purposes set forth in the petition.

C. Upon the filing of such a petition, the governing body shall fix a day for a hearing on the question of whether the proposed district shall be created. The hearing shall consider whether the residents and owners of real property within the proposed district would benefit from the establishment of the proposed district. All interested persons who either reside in or own taxable real property within the proposed district shall have the right to appear and show cause why any property or properties should not be included in the proposed district. If real property within a town is included in the proposed district, a copy of the petition and notice of the public hearing shall be delivered to the town council at least 30 days prior to the public hearing, and the town council may by resolution determine if the town council wishes any property located within the town to be included within the proposed district and any such resolution shall be delivered to the governing body prior to the public hearing required by this section. Such resolution shall be binding upon the governing body with respect to the inclusion or exclusion of such properties within the proposed district. If that resolution permits any commercial or industrial property located within a town to be included in the proposed district, then if requested to do so by the petition the town council of any town that has adopted a zoning ordinance also shall pass a resolution, to be effective upon creation of the proposed district, that is consistent with the requirements of subsection E with respect to commercial and industrial zoning classifications that shall be in force in that portion of the town included in the district. The petition shall comply with the provisions of this section with respect to minimum acreage or assessed valuation. Notice of the hearing shall be given by publication once a week for three consecutive weeks in a newspaper of general circulation within the locality. At least 10 days shall intervene between the third publication and the date set for the hearing. Such public hearing may be adjourned from time to time.

D. If the governing body finds the creation of the proposed district would be in furtherance of the county's comprehensive plan for the development of the area, in the best interests of the residents and owners of real property within the proposed district, and in furtherance of the public health, safety, and welfare, the governing body may pass a resolution that is reasonably consistent with the petition, that creates the district upon final adoption, and that provides for the appointment of an advisory board in accordance with this chapter upon final adoption. Any such resolution shall be conclusively presumed to be reasonably consistent with the petition if, following the public hearing, as provided in the following provisions of this section, the petition continues to comply with the provisions of this section with respect to the criteria relating to minimum acreage or assessed valuation.

E. The resolution shall provide a description with specific terms and conditions of all commercial and industrial zoning classifications that apply within the district, but not within any town within the district that has adopted a zoning ordinance, that shall be in force in the district upon its creation, together with any related criteria and a term of years, not to exceed 20 years, as to which each such zoning classification and each related criterion set forth therein shall remain in force within the district without elimination, reduction, or restriction, except (i) upon the written request or approval of the owner of any property affected by a change, (ii) as required to comply with the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) or the regulations adopted pursuant thereto, (iii) as required to comply with the provisions of the federal Clean Water Act regarding municipal and industrial stormwater discharges (33 U.S.C. § 1342(p))

and regulations promulgated thereunder by the federal Environmental Protection Agency, or (iv) as specifically required to comply with any other state or federal law.

F. A resolution creating a district shall also provide (i) that the district shall expire 50 years from the date upon which the resolution is passed or (ii) that the district shall expire when the district is abolished in accordance with § 33.2-2115. After the public hearing, the governing body may adopt a proposed resolution creating the district. No later than two business days following the adoption of the proposed resolution, copies of the proposed resolution shall be available in the office of the clerk of the governing body for inspection and copying by the petitioning landowners and their representatives, by members of the public, and by representatives of the news media. No later than seven business days following the adoption of the proposed resolution, any petitioning landowner may notify the clerk of the governing body in writing that the petitioning landowner is withdrawing his signature from the petition. Within the same seven-day period, the owner of any property in the proposed district that will be subject to the annual special improvements tax authorized by § 33.2-2105, if the proposed district is created, or the attorney-in-fact of any such owner may notify the clerk of the governing body in writing that he is adding his signature to the petition. The governing body may then proceed to final adoption of the proposed resolution following that seven-day period. If any petitioner has withdrawn his signature from the petition during that seven-day period, then the governing body may readopt the proposed resolution only if the petition, including any landowners who have added their signatures after adoption of the proposed resolution, continues to meet the provisions of this section. After the governing body has readopted the resolution creating the district, the district shall be established and the name of the district shall be "The ..... Transportation Improvement District."

§ 33.2-2102. Commission to exercise powers of the district.

The powers of a district created pursuant to this chapter shall be exercised by a commission. The commission shall consist of four members of the governing body, appointed by the governing body, plus one member of the town council of any participating town, appointed by the town council of the participating town. In addition to the appointed members, the Chairman of the Commonwealth Transportation Board or his designee shall be a member of the commission of any district created pursuant to this chapter.

The commission shall elect a chairman from its membership. The chairman may be the chairman or presiding officer of the governing body. In addition, the commission, with the advice of the district advisory board, shall elect a secretary and a treasurer, who may be members or employees of the governing body, the town council of a participating town, or other governmental body. The offices of secretary and treasurer may be combined. A majority of the commission members shall constitute a quorum, and a majority vote shall be necessary for any action taken by the commission. No vacancy in the membership of the commission shall impair the right of a majority of the members to form a quorum or to exercise all of its rights, powers, and duties.

§ 33.2-2103. Powers and duties of commission.

The commission may:

1. Expend district revenues to construct, reconstruct, alter, improve, expand, make loans or otherwise provide for the cost of transportation improvements and for financial assistance to operate transportation improvements in the district for the use and benefit of the public.

2. Acquire by gift, purchase, lease, in-kind contribution to construction costs, or otherwise any transportation improvements in the district and sell, lease as lessor, transfer, or dispose of any part of any transportation improvements in such manner and upon such terms as the commission may determine to be in the best interests of the district. However, prior to disposing of any such property or interest therein, the commission shall conduct a public hearing with respect to such disposition. At the hearing, the residents and owner of property within the district shall have an opportunity to be heard. At least 10 days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in the district, as prescribed by the commission. Such public hearing may be adjourned from time to time.

3. Negotiate and contract with any person with regard to any matter necessary and proper to provide any transportation improvements, including the financing, acquisition, construction, reconstruction, alteration, improvement, expansion, operation, or maintenance of any transportation improvements in the district. For the purposes of this chapter, transportation improvements are within the district if they are located within the

boundaries of the transportation improvement district or are reasonably deemed necessary for the construction or operation of transportation improvements within the boundaries of the transportation improvement district.

4. Enter into a continuing service contract for a purpose authorized by this chapter and make payments of the proceeds received from the special taxes levied pursuant to this chapter, together with any other revenues, for installments due under that service contract. The district may apply such payments annually during the term of that service contract in an amount sufficient to make the installment payments due under that contract, subject to the limitation imposed by this chapter. However, payments for any such service contract shall be conditioned upon the receipt of services pursuant to the contract. Such a contract shall not obligate a county or participating town to make payments for services of the district.

5. Accept the allocations, contributions, or funds of any available source or reimburse from any available source, including any person, for the whole or any part of the costs, expenses, and charges incident to the acquisition, construction, reconstruction, maintenance, alteration, improvement, and expansion or the operation of any transportation improvements in the district.

6. Contract for the extension and use of any public mass transit system or highway into territory outside the district on such terms and conditions as the commission determines.

7. Employ and fix the compensation of personnel who may be deemed necessary for the construction, operation, or maintenance of any transportation improvements in the district.

8. Have prepared an annual audit of the district's financial obligations and revenues, and upon review of such audit, request a tax rate adequate to provide tax revenues that, together with all other revenues, are required by the district to fulfill its annual obligations.

§ 33.2-2104. District advisory boards.

Within 30 days after the establishment of a district under this chapter, the governing body shall appoint six members to a district advisory board, and the town council of any participating town shall appoint two members to that board. Three of the six members appointed by the governing body shall be chosen by the governing body from nominations submitted to the governing body by the petitioners. If any members are subject to appointment by a town council as provided in this section, then one of the two members so appointed shall be chosen by the town council from nominations submitted to the town council by the petitioners. All members shall own or represent the owners of real property within the district zoned or used for commercial or industrial purposes. Each member shall be appointed for a term of four years, except the initial appointment of advisory board members shall provide that the terms of three of the members shall be for two years. If a vacancy occurs with respect to an advisory board member initially appointed by a governing body or a town council, or any successor of such a member, the governing body or the town council, as appropriate, shall appoint a new member who is an owner or representative of an owner of real property within the district zoned or used for commercial or industrial purposes. If a vacancy occurs with respect to an advisory board member initially nominated by the petitioners, or any successor thereof, the remaining advisory board members initially nominated by the petitioners, or the successors of such remaining advisory board members, shall nominate a new member for selection by the governing body or town council, as appropriate.

District advisory board members shall serve without pay, but the governing body shall provide the advisory board with facilities for the holding of meetings, and the commission shall appropriate funds needed to defray the reasonable expenses and fees of the advisory board, which shall not exceed $20,000 annually, including expenses and fees arising out of the preparation of the annual report. Such appropriations shall be based on an annual budget submitted by the board, and approved by the commission, sufficient to carry out its responsibilities under this chapter. The advisory board shall elect a chairman and a secretary and such other officers as it deems necessary. The advisory board shall fix the time for holding regular meetings, but it shall meet at least once every year. Special meetings of the advisory board shall be called by the chairman or by two members of the advisory board upon written request to the secretary of the advisory board. A majority of the members shall constitute a quorum.

The advisory board shall present an annual report to the commission on the transportation needs of the district and on the activities of the advisory board, and the advisory board shall present special reports on

transportation matters as requested by the commission or the governing body concerning taxes to be levied pursuant to this chapter.

§ 33.2-2105. Annual special improvements tax; use of revenues.

Upon the written request of the commission made to the governing body, the governing body may levy and collect an annual special improvements tax on taxable real estate zoned for commercial or industrial use or used for such purposes and taxable leasehold interests in that portion of the improvement district within its jurisdiction. For the purposes of this chapter, real property that is zoned to permit multiunit residential use but not yet used for that purpose and multiunit residential real property that is primarily leased or rented to residential tenants or other occupants by an owner who is engaged in such a business shall be deemed to be property in commercial use and therefore subject to the special improvements tax authorized by this section. Notwithstanding the provisions of Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1, the tax shall be levied on the assessed fair market value of the taxable real property. The rate of the special improvements tax shall not be more than 40 cents ($0.40) per $100 of the assessed fair market value of any taxable real estate or the assessable value of taxable leasehold property as specified by § 58.1-3203; however, if all the owners in any district so request in writing, this limitation on rate shall not apply. Such special improvements taxes shall be collected at the same time and in the same manner as the county's taxes are collected, and the proceeds shall be kept in a separate account. The effective date of the initial levy shall be, at the discretion of the governing body, either (i) January 1 of the year following adoption of the resolution creating the district or (ii) on a prorated basis for the period from the date when the special improvements tax was first imposed through the remainder of the year. All revenues received by the county pursuant to such taxes shall be paid to or at the direction of the district commission for its use pursuant to this chapter. All revenues generated from the annual special improvements taxes levied by the governing body pursuant to this section shall be deemed to be contributions of that governing body in any transportation cost-sharing formula.

§ 33.2-2106. Agreements with the Commonwealth Transportation Board; payment of special improvements tax to Transportation Trust Fund.

A. In addition to any other power conferred by this chapter, the district may contract with the Commonwealth Transportation Board for the Commonwealth Transportation Board to perform any of the purposes of the district.

The district may agree by contract to pay all or a portion of the special improvements tax to the Commonwealth Transportation Board.

Prior to executing any such contract, the district shall seek the agreement of the governing body that the county's officer charged with the responsibility for preparing the county's annual budget shall submit in the budget for each fiscal year in which any Commonwealth of Virginia Transportation Contract Revenue Bonds issued for such district are outstanding all amounts to be paid to the Commonwealth Transportation Board under such contract during such fiscal year.

If the amount required to be paid to the Commonwealth Transportation Board under the contract is not so paid for a period of 60 days after such amount is due, the Commonwealth Transportation Board shall, until such amount has been paid, withhold sufficient funds from funds appropriated and allocated, pursuant to Article 5 (§ 33.2-351 et seq.) of Chapter 3, to the highway construction district in which the transportation improvements covered by such contract are located or to such locality or localities in which such transportation improvements are located and to use such funds to satisfy the contractual requirements.

B. While nothing in this chapter shall limit the authority of any county or participating town to change the classification of property zoned for commercial or industrial use or used for such purpose upon the written request or approval of the owner of any property affected by such change after the effective date of any such contract, should a change in zoning classification so requested result in a shortfall in the total annual revenues from the imposition of the special improvements tax and the payments required to be made to the Commonwealth Transportation Board pursuant to the contract, the district shall request the governing body to increase the rate of such tax by such amount up to the maximum authorized rate as may be necessary to prevent such shortfall. If, however, a deficit remains after any rezoning and adjustment of the tax rate or the rate is at the maximum authorized rate and cannot be increased, then the amount of funds otherwise appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway

construction district in which the project covered by such contract is located or to the county shall be reduced by the amount of such deficit and used to satisfy the deficit.

§ 33.2-2107. Payments for certain changes in zoning classifications or use.

A. For any real property within the district for which a county or participating town changes its zoning classification from one that is subject to the special improvements tax authorized by § 33.2-2106 to a classification that is not subject to that tax, the county or participating town shall require the simultaneous payment from the property owner of a sum representing the present value of the future special improvements taxes estimated by the county to be lost as a result of such change in classification. On a case-by-case basis, however, the governing body or town council of a participating town may, in its sole discretion, defer, for no more than 60 days, the effective date of such change in zoning classification. Upon deferral, the lump sum provided for in this subsection shall be paid to the county in immediately available funds acceptable to the county before the deferred effective date. If the landowner fails to make this lump sum payment as and when required, the change in zoning classification shall not become effective and the ordinance shall be void. Special improvements taxes previously paid in the year of the zoning change may be credited toward the payment on a prorated basis. The portion of the payment that may be credited shall be that portion of the year following the change in zoning classification. If at the time there is outstanding a contract by which the district has agreed to pay all or a portion of the special improvements tax to the Commonwealth Transportation Board, then the district and the Commonwealth Transportation Board shall agree to a method of calculating the present value of the loss of future special improvements taxes resulting from such a change in zoning classification and the procedure for payment of such funds to the Commonwealth Transportation Board. Whenever any county or participating town acts in accordance with such an agreement between the district and the Commonwealth Transportation Board, the change in zoning classification shall not be considered to have resulted in a shortfall in the total annual revenues from the imposition of the special improvements tax and the payments required to be made to the Commonwealth Transportation Board.

B. Any owner of any real property that is subject to the special improvements tax authorized by § 33.2-2106 because it is zoned to permit multiunit residential use but is not yet used for that purpose or because it consists of multiunit residential real property that is primarily leased or rented to residential tenants or other occupants by an owner who is engaged in such a business who wishes to change the use of the real property to one that is not subject to that tax shall be required, prior to any such change in use, to pay to the county a sum representing the present value of the future special improvements taxes estimated by the county to be lost as a result of such change in use.

§ 33.2-2108. Jurisdiction of localities and officers, etc., not affected.

Neither the creation of a district nor any other provision in this chapter shall affect the power, jurisdiction, or duties of the respective local governing bodies of any county or participating town; sheriffs; treasurers; commissioners of the revenue; circuit, district, or other courts; clerks of any court; magistrates; or any other local or state officer in regard to the area embraced in any district or restrict or prevent any county or its governing body, or participating town or its town council, from imposing and collecting taxes or assessments for public improvements as permitted by law. Any county that creates a district pursuant to this chapter and any participating town may obligate itself with respect to the zoning ordinances, zoning ordinance text, and regulations relating thereto for all commercial and industrial classifications within the district as provided in this chapter for a term not to exceed 20 years from the date on which such district is created.

§ 33.2-2109. Allocation of funds to districts.

The governing body or the town council of a participating town in which a district has been created pursuant to this chapter may advance funds or provide matching funds from money not otherwise specifically allocated or obligated. Such funds may be received or generated from whatever source, including general revenues, special fees and assessments, state allocations, and contributions from private sources to a local district to assist the local district to undertake the transportation improvements for which it was created. To assist the district with an approved transportation improvement, the Commonwealth Transportation Board may allocate to a district created pursuant to this chapter only funds allocated, pursuant to Article 5 (§ 33.2-351 et seq.) of Chapter 3, and subsection A of § 58.1-638, to the construction districts and localities in which such transportation district is located.

§ 33.2-2110. Reimbursement for advances to district.

To the extent that a county or participating town has made advances to the district, the commission shall direct the district treasurer to reimburse the county or participating town from any district funds not otherwise specifically allocated or obligated.

§ 33.2-2111. Cooperation between districts and other political subdivisions.

Any district created pursuant to this chapter may enter into agreements with counties, cities, and towns or other political subdivisions of the Commonwealth, with the Metropolitan Washington Airports Authority, or with the Washington Metropolitan Area Transit Authority for joint or cooperative action in accordance with the standards and procedures set forth in § 15.2-1300.

§ 33.2-2112. Tort liability.

No pecuniary liability of any kind shall be imposed upon the Commonwealth or any county, city, or town or landowner therein because of any act, agreement, contract, tort, malfeasance, misfeasance, or nonfeasance by or on the part of a district or its agents, servants, or employees.

§ 33.2-2113. Approval by Commonwealth Transportation Board.

The district may not construct or improve a transportation improvement without the approval of the Commonwealth Transportation Board, the county in which the transportation improvement will be located, and, with respect to any improvements located within a participating town, its town council. At the request of the commission, the Commissioner of Highways may exercise the powers of condemnation provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, Article 1 (§ 33.2-1000 et seq.) of Chapter 10, or § 33.2-705, for the purpose of acquiring property for transportation improvements within the district.

Upon completion of such construction or improvement, the Commonwealth Transportation Board shall take any affected public highway into the appropriate state highway system for purposes of maintenance and subsequent improvements as necessary. Upon acceptance by the Commonwealth of such highway into a state highway system, all rights, title, and interest in the right-of-way and improvements of any affected highway shall vest in the Commonwealth. Upon completion of construction or improvement of a mass transit system, all rights, title, and interest in the right-of-way and improvements of such mass transit system shall vest in an agency or instrumentality of the Commonwealth designated by the Commonwealth Transportation Board.

§ 33.2-2114. Enlargement of local districts.

The district shall be enlarged by resolution of the governing body upon the petitions of the district commission and the owners of at least 51 percent of either the land area or the assessed value of real property of the district and of at least 51 percent of either the land area or assessed value of real property located within the territory sought to be added to the district. However, any such territory shall be contiguous to the existing district. The petition shall present the information required by § 33.2-2101. Upon receipt of such a petition, the county shall use the standards and procedures provided in § 33.2-2101, except that the residents and owners of both the existing district and the area proposed for the enlargement shall have the right to appear and show cause why any property should not be included in the proposed district. If the proposed enlargement of the district encompasses any portion of a town, then such standards and procedures shall include the requirement to obtain a resolution from the town council in the manner set forth in § 33.2-2101, which shall have the same effect as set forth in that section.

If the governing body finds the enlargement of a local district would be in accordance with the applicable comprehensive plan for the development of the area, in the best interests of the residents and owners of the property within the proposed district, and in furtherance of the public health, safety, and general welfare, and if the governing body finds that enlargement of the district does not limit or adversely affect the rights and interests of any party that has contracted with the district, the governing body may pass a resolution providing for the enlargement of the district.

§ 33.2-2115. Abolition of local transportation districts.

A. Any district created pursuant to this chapter may be abolished by resolutions passed by the governing body and the town council of any participating town, upon the joint petition of the commission and the owners of at least 51 percent of the land area located within the district. Joint petitions shall:

1. State whether the purposes for which the district was formed have been substantially achieved;

2. State whether all obligations incurred by the district have been fully paid;

3. Describe the benefits that can be expected from the abolition of the district; and

4. Request the governing body to abolish the district.

B. Upon receipt of such a petition, the governing body and the town council of any participating town, in considering the abolition of the district, shall use the standards and procedures described in § 33.2-2101 mutatis mutandis, except that all interested persons who either reside on or who own real property within the boundaries of the district shall have the right to appear and show cause why the district should not be abolished.

C. If the governing body and the town council of any participating town find that (i) the abolition of the district is in accordance with the locality's comprehensive plan for the development of the area; (ii) the abolition of the district is in the best interests of the residents and owners of the property within the district; (iii) the abolition of the district is in furtherance of the public health, safety, and welfare; and (iv) all debts of the district have been paid and the purposes of the district either have been, or should not be, fulfilled or finds that the governing body with the approval of the voters of the county has agreed to assume the debts of the district, then the governing body and the town council of any participating town may pass resolutions abolishing the district and the district advisory board. Upon abolition of the district, the title to all funds and properties owned by the district at the time of such dissolution shall vest in the county.

§ 33.2-2116. Chapter to constitute complete authority for acts authorized; liberal construction.

This chapter shall constitute complete authority for the district to take the actions authorized by this chapter. This chapter, being necessary for the welfare of the Commonwealth and its inhabitants, shall be liberally construed to effect its purposes. Any court test concerning the validity of any bonds that may be issued for transportation improvements made pursuant to this chapter shall be determined pursuant to the Public Finance Act of 1991 (§ 15.2-2600 et seq.).

CHAPTER 22.

CHESAPEAKE BAY BRIDGE AND TUNNEL DISTRICT AND COMMISSION.

§ 33.2-2200. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Bonds" means bonds, notes, bond anticipation notes, or other obligations of the District, notwithstanding any contrary provision in this chapter, which may be issued in certificated or uncertificated form as current interest or capital appreciation bonds, or a hybrid thereof, and may bear interest at a rate, which may be fixed, zero, or at a floating or variable rate of interest established by reference to indices or formulae, that may be in excess of the rate now permitted by law and payable at such times as the Commission may determine. Bonds may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments of principal and premium, if any, and interest on the bonds. Bonds may be sold in such manner and for such price as the Commission may determine to be for the best interests of the District.

"Commission" means the governing body of the District known as the Chesapeake Bay Bridge and Tunnel Commission.

"Cost," as applied to the project, means any or all of the following: the cost of construction; the cost of the acquisition of all land, rights-of-way, property, rights, franchises, easements, and interests acquired by the Commission for such construction; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved; the cost of all machinery and equipment; provision for reasonable working capital, financing charges, and interest prior to and during construction; and, if deemed advisable by the Commission, for a period not exceeding one year after completion of construction, the cost of traffic estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenues, and other expenses necessary or incident to determining the feasibility or practicability of constructing the project; administrative expenses; and such other expenses as may be necessary or incident to the construction of the project, the financing of such construction, and the placing of the project in operation. Any obligation or expense hereafter incurred by the Commonwealth Transportation Board with the approval of the Commission for traffic surveys, borings, preparation of plans and specifications, and other engineering services in connection with the construction of

the project shall be regarded as a part of the cost of the project and shall be reimbursed to the Commonwealth Transportation Board out of the proceeds of revenue bonds issued for the project as authorized in this chapter.

"District" means the political subdivision of the Commonwealth known as the Chesapeake Bay Bridge and Tunnel District.

"Owner" includes all persons as defined in § 1-230 having any interest or title in and to property, rights, franchises, easements, and interests authorized to be acquired by this chapter.

"Project" means a bridge or tunnel or a bridge and tunnel project, including the existing bridge and tunnel crossing operated by the Commission and all or a part of an additional and generally parallel bridge and tunnel crossing, from any point within the boundaries of the District to a point in the County of Northampton, including such approaches and approach highways as the Commission deems necessary to facilitate the flow of traffic in the vicinity of such project or to connect such project with the highway system or other traffic facilities in the Commonwealth, and including all overpasses, underpasses, interchanges, entrance plazas, toll houses, service stations, garages, restaurants, and administration, storage, and other buildings and facilities that the Commission may deem necessary for the operation of such project, together with all property, rights, franchises, easements, and interests that may be required by the Commission for the construction or the operation of such project.

§ 33.2-2201. Chesapeake Bay Bridge and Tunnel District.

The Chesapeake Bay Bridge and Tunnel District is hereby created as a political subdivision of the Commonwealth. The District shall comprise the area included in the boundaries of the Counties of Accomack and Northampton; within the corporate limits of the Cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, and Virginia Beach; and the area of Chesapeake Bay between these political subdivisions. This entity may sue and be sued under the name Chesapeake Bay Bridge and Tunnel District. Through its governing board, the Chesapeake Bay Bridge and Tunnel Commission, the District may plead and be impleaded and contract with individuals, partnerships, associations, private corporations, municipal corporations, political subdivisions of the Commonwealth, and the federal government or any agency thereof having any interest or title in and to property, rights, easements, or franchises authorized to be acquired by this chapter.

§ 33.2-2202. Chesapeake Bay Bridge and Tunnel Commission.

The Chesapeake Bay Bridge and Tunnel Commission is hereby created as the governing board of the Chesapeake Bay Bridge and Tunnel District created by this chapter. The Commission shall consist of the following 11 members: one member of the Commonwealth Transportation Board, two members from Accomack County, two members from Northampton County, one member from the City of Chesapeake, one member from the City of Hampton, one member from the City of Newport News, one member from the City of Norfolk, one member from the City of Portsmouth, and one member from the City of Virginia Beach. The members of the Commission appointed under the provisions of this section shall be residents of the counties or cities from which they are appointed.

Commission members shall be appointed by the Governor, subject to confirmation by both houses of the General Assembly. Commission members shall be appointed to four-year terms. Any member of the Commission shall be eligible for reappointment to a second four-year term, but shall be ineligible for appointment to any additional term except for appointment to fill vacancies for portions of unexpired terms. When a vacancy occurs, the Governor shall appoint a new member to complete the unexpired portion of the term, subject to confirmation by both houses of the General Assembly.

The Commission shall select a chairman, vice-chairman, secretary, and treasurer annually from its membership and as provided in its bylaws. Meetings of the Commission shall be held upon the call of the chairman or as otherwise provided in the bylaws of the Commission. Any member of the Commission may be removed from office for cause by the Governor. Each member of the Commission, immediately following his appointment, shall take an oath of office, prescribed by Article II, Section 7 of the Constitution of Virginia, before any judge, clerk, or deputy clerk of any court of record; any judge of a district court in the Commonwealth; the Secretary of the Commonwealth or his deputy; or a member of the State Corporation Commission. No member of the Commission shall receive any salary, but members are entitled to expenses and per diem pay as provided in §§ 2.2-2813 and 2.2-2825. Six members of the Commission shall constitute a

quorum. The records of the Commission shall be public records. The Commission is authorized to do all things necessary or incidental to the performance of its duties and the execution of its powers under this chapter. The route for any bridge or tunnel, or combination thereof, built by the Commission shall be selected subject to the approval of the Commonwealth Transportation Board.

§ 33.2-2203. General powers of the Commission.

The Commission is hereby authorized and empowered:

1. To establish, construct, maintain, repair, and operate the project, provided that no such project shall be constructed unless adequate provision is made for the retirement of any revenue bonds issued by the Commission;

2. To determine the location, character, size, and capacity of the project; to establish, limit, and control such points of ingress to and egress from the project as may be necessary or desirable in the judgment of the Commission to ensure the proper operation and maintenance of the project; and to prohibit entrance to such project from any point or points not so designated. The Commission shall coordinate its plans with those of the Commonwealth Transportation Board insofar as practicable;

3. To secure all necessary federal authorizations, permits, and approvals for the construction, maintenance, repair, and operation of the project;

4. To make regulations for the conduct of its business;

5. To acquire, by purchase or condemnation in the name of the District, hold, and dispose of real and personal property for the corporate purposes of the District;

6. To acquire full information to enable it to establish, construct, maintain, repair, and operate the project;

7. To employ consulting engineers, a superintendent or manager of the project, and such other engineering, architectural, construction, and accounting experts, and inspectors, attorneys, and other employees as may be deemed necessary and, within the limitations prescribed in this chapter, to prescribe their powers and duties and fix their compensation;

8. To pay, from any available moneys, the cost of plans, specifications, surveys, estimates of cost and revenues, legal fees, and other expenses necessary or incident to determining the feasibility or practicability of financing, constructing, maintaining, repairing, and operating the project;

9. To issue revenue bonds of the District, for any of its corporate purposes, payable solely from the tolls and revenues pledged for their payment, and to refund its bonds, all as provided in this chapter;

10. To fix, revise, charge, and collect tolls and other charges for the use of the project;

11. To make and enter into all contracts or agreements, as the Commission may determine, that are necessary or incidental to the performance of its duties and to the execution of the powers granted under this chapter;

12. To accept loans and grants of money or materials or property at any time from the United States of America or the Commonwealth or any agency or instrumentality thereof;

13. To adopt an official seal and alter the same at its pleasure and to make, amend, and repeal bylaws and regulations not inconsistent with law to carry into effect the powers and purposes of the Commission;

14. To sue and be sued and to plead and be impleaded, all in the name of the District;

15. To exercise any power usually possessed by private corporations performing similar functions, including the right to expend, solely from funds provided under the authority of this chapter, such funds as may be considered by the Commission to be advisable or necessary in advertising its facilities and services to the traveling public; and

16. To do all acts and things necessary or incidental to the performance of its duties and the execution of its powers under this chapter.

§ 33.2-2204. Additional powers of the Commission.

The Commission has the power:

1. To construct grade separations at intersections of the project with public highways and to change and adjust the lines and grades of such highways so as to accommodate the same to the design of such grade separation. The cost of such grade separations and any damage incurred in changing and adjusting the lines

and grades of such highways shall be ascertained and paid by the Commission as a part of the cost of the project.

2. To change the location of any portion of any public highway. The Commission shall cause the portion of the public highway to be reconstructed at such location as the Commission deems most favorable and of substantially the same type and in as good condition as the original highway. The cost of such reconstruction and any damage incurred in changing the location of any such highway shall be ascertained and paid by the Commission as a part of the cost of the project.

Any public highway affected by the construction of the project may be vacated or relocated by the Commission in the manner now provided by law for the vacation or relocation of public roads, and any damages awarded on account thereof shall be paid by the Commission as a part of the cost of the project.

3. To enter upon any lands, waters, and premises in the Commonwealth, along with its authorized agents and employees, for the purpose of making surveys, soundings, drillings, and examinations as they may deem necessary or convenient for the purposes of this chapter, and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under any condemnation proceedings that may be then pending. The Commission shall make reimbursement for any actual damage resulting to such lands, waters, and premises as a result of such activities.

4. To make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation, and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances (herein called "public utility facilities") of any public utility in, on, along, over, or under the project. When public utility facilities that now are, or hereafter may be, located in, on, along, over, or under the project should be relocated in the project, or should be removed from the project, the public utility owning or operating such facilities shall relocate or remove the same in accordance with the order of the Commission, provided that the cost and expenses of such relocation or removal, including the cost of installing such facilities in a new location, and the cost of any lands, or any rights or interests in lands, and any other rights, acquired to accomplish such relocation or removal, shall be ascertained and paid by the Commission as a part of the cost of the project. In case of any such relocation or removal of facilities, the public utility owning or operating the facilities, its successors or assigns, may maintain and operate such facilities, with the necessary appurtenances, in the new location, for as long a period, and upon the same terms and conditions, as it had the right to maintain and operate such facilities in their former location.

The Commonwealth hereby consents to the use of all lands owned by it, including lands lying under water, that are deemed by the Commission to be necessary for the construction or operation of the project.

§ 33.2-2205. Regulations of the Commission; enforcement.

The Commission shall have power:

1. To adopt and enforce reasonable regulations that, after publication one time in full in a newspaper of general circulation published in or having general circulation in the City of Virginia Beach and a newspaper of general circulation published in or having general circulation in the County of Northampton and when posted where the using public may conveniently see such regulations, shall have the force and effect of law as to (i) maximum and minimum speed limits applicable to motor vehicles using the project and other property under control of the Commission; (ii) the types, kinds, and sizes of the vehicles that may use the project; (iii) the nature, size, type, or kind of materials or substances that shall not be transported through or over the project; and (iv) such other regulations as may be necessary or expedient in the interest of public safety with respect to the use of the project.

2. To punish a violation of the regulations provided for in subdivision 1 as follows:

a. If a violation would have been a violation of law or ordinance if committed on any public street or highway in the locality in which such violation occurred, it shall be tried and punished in the same manner as if it had been committed on such public street or highway.

b. If a violation occurs within one jurisdiction and is punishable within another jurisdiction, the court trying the case shall, if the accused is found guilty, apply the punishment that is prescribed for offenses occurring within the jurisdiction of the court trying the case.

c. All other violations shall be punishable as a misdemeanor.

3. To appoint and employ police to enforce within the area under the control of the Commission the regulations adopted by the Commission and the laws of the Commonwealth. Such police shall have the powers vested in police officers under §§ 15.2-1704 and 52-8, which sections shall apply, mutatis mutandis, to police appointed pursuant to this chapter.

Such police appointed by the Commission may issue summons to appear, or arrest on view or on information without warrant as permitted by law, within the jurisdiction of the Commonwealth, and conduct before any police or county court of any political subdivision into which the project extends any person violating, within or upon the project or other property under the control of the Commission, any rule or regulation of the Commission or any law of the Commonwealth pertaining to the regulation and control of highway traffic on any bridge or tunnel owned or operated by the Commission, including all entrance or exit plazas and approaches adjacent or appurtenant thereto and any rule or regulation regarding the payment of tolls.

4. For the purpose of enforcing such laws and regulations, the courts of the City of Virginia Beach and the County of Northampton have concurrent jurisdiction of criminal offenses that constitute violations of the laws and regulations of the Commission.

§ 33.2-2206. Acquisition of property.

The Commission is hereby authorized and empowered to acquire by purchase, whenever it deems such purchase expedient, solely from funds provided under the authority of this chapter, such lands, structures, rights-of-way, property, rights, franchises, easements, and other interests in lands, including lands lying under water and riparian rights, that are located within the Commonwealth as it may deem necessary or convenient for the construction and operation of the project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof, and to take title thereto in the name of the District.

All localities and political subdivisions and all public agencies and commissions of the Commonwealth, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant, or convey to the District at the Commission's request upon such terms and conditions as the proper authorities of such localities, political subdivisions, agencies, or commissions of the Commonwealth may deem reasonable and fair and without the necessity for any advertisement, order of court, or other action or formality, other than the regular and formal action of the authorities concerned, any real property that may be necessary or convenient to the effectuation of the authorized purposes of the Commission, including public highways and other real property already devoted to public use.

Whenever a reasonable price cannot be agreed upon, or whenever the owner is legally incapacitated or is absent, unknown, or unable to convey valid title, the Commission is hereby authorized and empowered to acquire by condemnation or by the exercise of the power of eminent domain any lands, property, rights, rights-of-way, franchises, easements, and other property, including public lands, parks, playgrounds, reservations, highways, or parkways, or parts thereof or rights therein, of any person, partnership, association, railroad, public service, public utility or other corporation, municipality, or political subdivision deemed necessary or convenient for the construction or the efficient operation of the project or necessary in the restoration of public or private property damaged or destroyed. Such proceedings shall be in accordance with and subject to the provisions of any and all laws applicable to condemnation of property in the name of the Commissioner of Highways under the laws of the Commonwealth. Title to any property acquired by the Commission shall be taken in the name of the District. In any condemnation proceedings, the court having jurisdiction of the suit, action, or proceeding may make such orders as may be just to the Commission and to the owners of the property to be condemned and may require an undertaking or other security to secure such owners against any loss or damage by reason of the failure of the Commission to accept and pay for the property, but neither such undertaking or security nor any act or obligation of the Commission shall impose any liability upon the District except as may be paid from the funds provided under the authority of this chapter.

If the owner, lessee, or occupier of any property to be condemned refuses to remove his personal property therefrom or give up possession thereof, the Commission may proceed to obtain possession in any manner now or hereafter provided by law.

With respect to any railroad property or right-of-way upon which railroad tracks are located, any powers of condemnation or of eminent domain may be exercised to acquire only an easement interest therein, which is located either sufficiently far above or sufficiently far below the grade of any railroad track upon such railroad property so that neither the proposed project nor any part thereof, including any bridges, abutments, columns, supporting structures, and appurtenances, nor any traffic upon it interferes in any manner with the use, operation, or maintenance of the trains, tracks, works, or appurtenances or other property of the railroad nor endanger the movement of the trains or traffic upon the tracks of the railroad. Prior to the institution of condemnation proceedings for such easement over or under such railroad property or right-of-way, plans and specifications of the proposed project showing compliance with the above-mentioned above or below grade requirements and showing sufficient and safe plans and specifications of such overhead or undergrade structure and appurtenances shall be submitted to the railroad for examination and approval. If the railroad fails or refuses within 30 days to approve the plans and specifications so submitted, the matter shall be submitted to the State Corporation Commission, as to the sufficiency and safety of such plans and specifications and as to such elevations or distances above or below the tracks. Said overhead or undergrade structure and appurtenances shall be constructed only in accordance with such plans and specifications and in accordance with such elevations or distances above or below the tracks so approved by the railroad or the State Corporation Commission. A copy of the plans and specifications approved by the railroad or the State Corporation Commission shall be filed as an exhibit with the petition for condemnation. The cost of any such overhead or undergrade projects and appurtenances and any expense and cost incurred in changing, adjusting, relocating, or removing the lines and grades of such railroad in connection with the project shall be paid by the Commission as a part of the cost of the project.

§ 33.2-2207. Consent of Commonwealth to use subaqueous soil of the Chesapeake Bay.

The Commonwealth hereby consents to the use by the Commission, in any manner whatsoever in the performance of its duties, of all lands lying under the waters of the Chesapeake Bay that are within the Commonwealth and are deemed by the Commission to be necessary for the construction or operation of the project.

§ 33.2-2208. Revenue bonds.

The Commission is hereby authorized to provide by resolution for the issuance of revenue bonds of the District for any one or more of the following purposes: (i) paying all or a part of the cost of all or a part of the project and (ii) refunding any outstanding revenue bonds of the District that have been issued under the provisions of this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at such rate not exceeding six percent per year payable semiannually, shall mature at such time, not exceeding 40 years from their date, as may be determined by the Commission, and may be made redeemable before maturity, at the option of the Commission, at such price and under such terms and conditions as may be fixed by the Commission prior to the issuance of the bonds. The principal and interest of such bonds may be made payable in any lawful medium. The Commission shall determine the form of the bonds, including any interest coupons to be attached thereto, and the manner of execution of the bonds, and shall fix the denomination of the bonds and the place of payment of principal and interest thereof, which may be at any bank or trust company within or outside of the Commonwealth. If any officer whose signature or a facsimile of whose signature appears on any bonds or coupons ceases to be such officer before the delivery of the bonds, his signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until delivery. All revenue bonds issued under the provisions of this chapter shall have and are hereby declared to have, as between successive holders, all the qualities and incidents of negotiable instruments under the negotiable instruments law of the Commonwealth. The bonds may be issued in coupon or in registered form, or both, as the Commission may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion of any bonds registered as to both principal and interest into coupon bonds. The Commission may sell such bonds in such manner and for such price as it may determine to be for the best interest of the District, but no such sale shall be made at a price so low as to require the payment of interest on the money

received therefor at more than six percent per year computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, excluding from such computations the amount of any premium to be paid on redemption of any bonds prior to maturity. The proceeds of such bonds shall be disbursed for the purposes for which such bonds shall have been issued under such restrictions, if any, as the resolution authorizing the issuance of such bonds or the trust indenture provided for in this chapter. If the bonds of a particular issue, by error of estimates or otherwise, are less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust indenture securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose. If the proceeds of the bonds of any issue exceed the amount required for the purpose for which such bonds are issued, the surplus shall be paid into the funds hereinafter provided for the payment of principal and interest of such bonds. Prior to the preparation of definitive bonds, the Commission may, under like restrictions, issue temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. The Commission may also provide for the replacement of any bond that becomes mutilated or that has been destroyed or lost. Such revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than the proceedings, conditions, and things that are specified and required by this chapter.

§ 33.2-2209. Bonds not to constitute a debt or pledge of taxing power.

Revenue bonds issued under the provisions of this chapter shall not be deemed to constitute a debt of the District or of the Commonwealth or of any county, city, district, or political subdivision thereof, or a pledge of the faith and credit of the District or of the Commonwealth or of any county, city, district, or political subdivision thereof, but such bonds shall be payable solely from the funds herein provided therefor from tolls and other revenues. The issuance of revenue bonds under the provisions of this chapter shall not directly or indirectly or contingently obligate the District, the Commonwealth, or any county, city, district, or political subdivision thereof to levy or to pledge any form of taxation whatever therefor. All such revenue bonds shall contain a statement on their face substantially to the foregoing effect.

§ 33.2-2210. Trust indenture.

In the discretion of the Commission any bonds issued under the provisions of this chapter may be secured by a trust indenture by and between the Commission and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the Commonwealth. Such trust indenture or the resolution providing for the issuance of such bonds may pledge or assign the tolls and other revenues to be received, but shall not convey or mortgage the project or any part thereof. Such trust indenture or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Commission in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation, and insurance of the project in connection with which such bonds have been authorized, the rates of toll to be charged, and the custody, safeguarding, and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the Commonwealth that may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Commission. Any such trust indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust indenture or resolution may contain such other provisions as the Commission may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust indenture or resolution may be treated as a part of the cost of the operation of the project.

§ 33.2-2211. Revenues.

The Commission is hereby authorized to fix, revise, charge, and collect tolls for the use of the project, and to contract with any person, partnership, association, or corporation desiring the use thereof, and to fix the terms, conditions, rents, and rates of charges for such use.

Such tolls shall be so fixed and adjusted in respect of the aggregate of tolls from the project in connection with which the bonds of any issue have been issued under the provisions of this chapter as to provide a fund

sufficient with other revenues, if any, to pay (i) the cost of maintaining, repairing, and operating the project and (ii) the principal of and the interest on such bonds as the same become due and payable, and to create reserves for such purposes. Such tolls shall not be subject to supervision or regulation by any other commission, board, bureau, or agency of the Commonwealth. The tolls and all other revenues derived from the project in connection with which the bonds of any issue have been issued, except such part thereof as may be necessary to pay such cost of maintenance, repair, and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust indenture securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust indenture in a sinking fund that is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the tolls or other revenues or other moneys so pledged and thereafter received by the Commission shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Commission, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust indenture by which a pledge is created need be filed or recorded except in the records of the Commission. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust indenture. Except as may otherwise be provided in such resolution or such trust indenture, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another.

§ 33.2-2212. Cessation of tolls.

When the bonds issued for the project and the interest thereon have been paid, or a sufficient amount has been provided for their payment and continue to be held for that purpose, the Commission shall cease to charge tolls for the use of the project, and thereafter the project shall be free, provided that the Commission shall thereafter charge tolls for the use of the project in the event that tolls are required for maintaining, repairing, and operating the project due to the lack of funds from sources other than tolls.

§ 33.2-2213. Transfer to Commonwealth.

Except as provided in this section, when all bonds issued under the provisions of this chapter in connection with the project and the interest thereon have been paid or a sufficient amount for the payment of all such bonds and the interest thereon to the maturity thereof has been set aside in trust for the benefit of the bondholders, the project, if then in good condition and repair, shall become a part of the primary state highway system and shall thereafter be maintained by the Commonwealth Transportation Board free of tolls. The Commission may, in any resolution or trust indenture authorizing or securing bonds under the provisions of this chapter, provide for combining the project and any public ferry service then being operated by the Commission for financing purposes, and for the continuance of tolls on the project and such public ferry service until all such bonds and the interest thereon have been paid or a sufficient amount for such purposes has been set aside in trust for the benefit of the bondholders.

§ 33.2-2214. Trust funds.

All moneys received pursuant to the authority of this chapter, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this chapter. The resolution authorizing the bonds of any issue or the trust indenture securing such bonds shall provide that any officer with whom, or any bank or trust company with which, such moneys are deposited shall act as trustee of such moneys and shall hold and apply the moneys for the purposes provided in this chapter, subject to such regulations as this chapter and such resolution or trust indenture may provide.

§ 33.2-2215. Remedies.

Any holder of bonds issued under the provisions of this chapter or any of the coupons appertaining thereto, and the trustee under any trust indenture, except to the extent the rights herein given may be restricted by such trust indenture or the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of the Commonwealth or granted hereunder or under such trust indenture or the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this chapter or

by such trust indenture or resolution to be performed by the Commission or by any officer thereof, including the fixing, charging, and collecting of tolls.

§ 33.2-2216. Exemption from taxation.

The exercise of the powers granted by this chapter will be in all respects for the benefit of the people of the Commonwealth and for the increase of their commerce and prosperity, and as the operation and maintenance of the project will constitute the performance of essential governmental functions, the Commission shall not be required to pay any taxes or assessments upon the project or any property acquired or used by the Commission under the provisions of this chapter or upon the income therefrom, and the bonds issued under the provisions of this chapter, their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation within the Commonwealth.

§ 33.2-2217. Governmental function.

It is hereby found, determined, and declared that the creation of the District and the carrying out of its corporate purposes is in all respects for the benefit of the people of the Commonwealth and is a public purpose and that the District and the Commission will be performing an essential governmental function in the exercise of the powers conferred by this chapter, and the Commonwealth covenants with the holders of the bonds issued under the provisions of this chapter that the District shall not be required to pay any taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation and maintenance of the project or upon any revenues therefrom, and the project and the bonds issued in connection therewith and the income derived therefrom shall be exempt from all state and local taxation.

§ 33.2-2218. Bonds eligible for investment.

Bonds issued by the District under the provisions of this chapter are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions and all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities that may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations is now or may hereafter be authorized by law.

§ 33.2-2219. Protection from competition.

No franchise, right, or privilege shall be granted or authorized by the Commonwealth or by any political subdivision or court thereof for the acquisition, establishment, construction, maintenance, repair, or operation of any bridge or tunnel or bridge and tunnel facility from any point within the boundaries of the District to a point in the County of Northampton, except to the Commission so long as any bonds issued under this chapter remain outstanding or until provision is first made for the payment of the principal and the interest and the premium, if any, due and payable upon all such bonds, provided that such prohibition does not apply to any ferry that may be established for the exclusive transportation of railroad cars, or of railroad passengers holding through tickets, or to projects heretofore authorized under the Transportation Development and Revenue Bond Act (§ 33.2-1700 et seq.).

§ 33.2-2220. Miscellaneous; penalties.

A. Any action taken by the Commission under the provisions of this chapter may be authorized by resolution at any regular or special meeting, and each such resolution shall take effect immediately and need not be published or posted.

B. The project when constructed and opened to traffic shall be maintained and kept in good condition and repair by the Commission. The project shall also be policed and operated by such force of police, toll-collectors, and other operating employees as the Commission may in its discretion employ.

C. All other police officers of the Commonwealth and of each locality or political subdivision of the Commonwealth through which any project, or portion thereof, extends shall have the same powers and jurisdiction within the limits of such projects as they have beyond such limits and shall have access to the project at any time for the purpose of exercising such powers and jurisdiction.

D. All private property damaged or destroyed by the construction of the project or any part thereof shall be restored or repaired and placed in its original condition as nearly as practicable or adequate compensation made therefor out of funds provided under the authority of this chapter.

E. On or before the last day of February in each year, the Commission shall make an annual report of its activities during the preceding calendar year to the Governor. In each report, the Commission shall set forth a complete operating and financial statement covering its operations during the year. The Commission shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants, and the cost thereof may be treated as a part of the cost of construction or operation of the project. The records, books, and accounts of the Commission shall be subject to examination and inspection by duly authorized representatives of the Governor, the Commonwealth Transportation Board, the governing bodies of the political subdivisions constituting the District, and any bondholder at any reasonable time, provided the business of the Commission is not unduly interrupted or interfered with by such action.

F. Any member, agent, or employee of the Commission who contracts with the Commission or District or is interested, either directly or indirectly, in any contract with the Commission or District or in the sale of any property, either real or personal, to the District shall be punished by a fine of not more than $1,000 or by imprisonment for not more than one year, or both.

G. Any person who uses the project and fails or refuses to pay the toll provided therefor shall be punished by a fine of not more than $100 or by imprisonment for not more than 30 days, or both. In addition, the Commission shall have a lien upon the vehicle driven by such person for the amount of such toll and may take and retain possession thereof until the amount of such toll and all charges in connection therewith shall have been paid.

§ 33.2-2221. Liberal construction.

This chapter, being necessary for the welfare of the Commonwealth and its inhabitants, shall be liberally construed to effect the purposes thereof.

§ 33.2-2222. Severability.

The provisions of this chapter are severable and if any of its provisions shall be held unconstitutional by an appropriate court, the decision of such court shall not affect or impair any of the remaining provisions of this chapter.

CHAPTER 23.

U.S. ROUTE 58 CORRIDOR DEVELOPMENT FUND AND PROGRAM.

§ 33.2-2300. U.S. Route 58 Corridor Development Fund.

There is hereby created in the Department of the Treasury a special nonreverting fund that shall be a part of the Transportation Trust Fund and that shall be known as the U.S. Route 58 Corridor Development Fund (the Fund), consisting of the first $40 million of annual collections of the state recordation taxes imposed by Chapter 8 of Title 58.1, provided, however, that this dedication shall not affect the local recordation taxes under subsection B of § 58.1-802 and § 58.1-814. The Fund shall also include such other funds as may be appropriated by the General Assembly and designated for the Fund and all interest, dividends, and appreciation that may accrue thereto. Any moneys remaining in the Fund at the end of a biennium shall not revert to the general fund, but shall remain in the Fund. Allocations from the Fund may be paid to any authority, locality, or commission for the purposes specified in § 33.2-2301.

§ 33.2-2301. U.S. Route 58 Corridor Development Program.

A. The General Assembly declares it to be in the public interest that the economic development needs and economic growth potential of south-central and Southwest Virginia be addressed by a special nonreverting fund that shall be a part of the Transportation Trust Fund and that shall be known as the U.S. Route 58 Corridor Development Fund as established in § 33.2-2300 (the Fund). Moneys contained in the Fund shall be used for the costs of providing an adequate, modern, safe, and efficient highway system, generally along Virginia's southern boundary (the Program), including environmental and engineering studies, rights-of-way acquisition, construction, improvements, and financing costs.

B. Allocations from the Fund shall be made annually by the Commonwealth Transportation Board for the creation and enhancement of a safe, efficient highway system connecting the communities, businesses, places of employment, and residents of the southwestern-most portion of the Commonwealth to the communities,

businesses, places of employment, and residents of the southeastern-most portion of the Commonwealth, thereby enhancing the economic development potential, employment opportunities, mobility, and quality along such highway.

C. Allocations from the Fund shall not diminish or replace allocations made or planned to be made from other sources or diminish allocations to which any highway, project, facility, district, system, or locality would be entitled under other provisions of this title, but shall be supplemental to other allocations to the end that highway resource improvements in the U.S. Route 58 Corridor may be accelerated and augmented. Notwithstanding any contrary provisions of this title, allocations from the Fund may be applied to highway projects in the Interstate System, primary or secondary state highway system, or urban highway system. Allocations under this subsection shall not be limited to projects involving only existing U.S. Route 58 but may be made to projects involving other highways, provided that the broader goal of creation of an adequate modern highway system generally along Virginia's southern boundary is served thereby.

D. The Commonwealth Transportation Board may expend such funds from all sources as may be lawfully available to initiate the Program and to support bonds and other obligations referenced in subsection F. Any moneys expended from the Transportation Trust Fund for the Program, other than moneys contained in the Fund, may be reimbursed from the Fund, to the extent permitted by Article X, Section 9 of the Constitution of Virginia.

E. The Commonwealth Transportation Board is encouraged to utilize the existing four-lane divided highways, available rights-of-way acquired for additional four-laning, bypasses, connectors, and alternate routes.

F. To the extent permitted by Article X, Section 9 of the Constitution of Virginia, moneys contained in the Fund may be used to secure payment of bonds or other obligations, and the interest thereon, issued in furtherance of the purposes of this section. In addition, the Commonwealth Transportation Board is authorized to receive, dedicate, or use legally available Transportation Trust Fund revenues and any other available sources of funds to secure the payment of bonds or other obligations, including interest thereon, in furtherance of the Program. No bond or other obligations payable from revenues of the Fund shall be issued unless specifically approved by the General Assembly. No bond or other obligations, secured in whole or in part by revenues of the Fund, shall pledge the full faith and credit of the Commonwealth.

G. Forty million dollars shall be transferred annually to the Fund with the first such transfer to be made on July 1, 1990, or as soon thereafter as reasonably practicable. Such transfer shall be made by the issuance of a treasury loan at no interest in the amount of $40 million to the Fund to ensure that the Fund is fully funded on the first day of the fiscal year. Such treasury loan shall be repaid from the Commonwealth's portion of the state recordation tax imposed by Chapter 8 (§ 58.1-800 et seq.) of Title 58.1 designated for the Fund by § 33.2-2300. For each fiscal year following July 1, 1990, the Secretary of Finance is authorized to make additional treasury loans in the amount of $40 million on July 1 of such fiscal years, and such treasury loans shall be repaid in a like manner as provided in this subsection.

CHAPTER 24.

NORTHERN VIRGINIA TRANSPORTATION DISTRICT FUND AND PROGRAM.

§ 33.2-2400. Northern Virginia Transportation District Fund.

A. There is hereby created in the Department of the Treasury a special nonreverting fund that shall be a part of the Transportation Trust Fund and that shall be known as the Northern Virginia Transportation District Fund, consisting of transfers pursuant to § 58.1-816 of annual collections of the state recordation taxes attributable to the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park and the Counties of Arlington, Fairfax, Loudoun, and Prince William; however, this dedication shall not affect the local recordation taxes under subsection B of § 58.1-802 and § 58.1-814. The Fund shall also include any public rights-of-way use fees appropriated by the General Assembly; any state or local revenues, including any funds distributed pursuant to § 33.2-362, 33.2-364, or 33.2-366, that may be deposited into the Fund pursuant to a contract between a jurisdiction participating in the Northern Virginia Transportation District Program and the Commonwealth Transportation Board; and any other funds as may be appropriated by the General Assembly and designated for the Fund and all interest, dividends, and appreciation that may accrue thereto. Any moneys remaining in the Fund at the end of a biennium shall not revert to the general fund, but

shall remain in the Fund, subject to the determination by the Commonwealth Transportation Board that a Category 2, 3, or 4 project may be funded.

B. Allocations from the Fund may be paid (i) to any authority, locality, or commission for the purposes of paying the costs of the Northern Virginia Transportation District Program, which consists of the following: the Fairfax County Parkway, the Route 234 Bypass, Metrorail capital improvements attributable to Fairfax County including Metro parking expansions, Metrorail capital improvements including the Franconia-Springfield Metrorail Station and new rail car purchases, the Route 7 improvements in Loudoun County and Fairfax County, the Route 50/Courthouse Road interchange improvements in Arlington County, the Route 28/Route 625 interchange improvements in Loudoun County, Metrorail capital improvements attributable to the City of Alexandria including the King Street Metrorail Station access, Metrorail capital improvements attributable to Arlington County including Ballston Station improvements, the Route 15 safety improvements in Loudoun County, the Route 28 parallel roads in Loudoun County, the Route 28/Sterling Boulevard interchange in Loudoun County, the Route 1/Route 123 interchange improvements in Prince William County, the Lee Highway improvements in the City of Fairfax, the Route 123 improvements in Fairfax County, the Telegraph Road improvements in Fairfax County, the Route 123 Occoquan River Bridge, Gallows Road in Fairfax County, the Route 1/Route 234 interchange improvements in Prince William County, the Potomac-Rappahannock Transportation Commission bus replacement program, and the Dulles Corridor Enhanced Transit program and (ii) for Category 4 projects as provided in § 2 of the act or acts authorizing the issuance of Bonds for the Northern Virginia Transportation District Program.

C. On or before July 15, 1994, $19 million shall be transferred to the Fund. Such transfer shall be made by the issuance of a treasury loan at no interest in the amount of $19 million in the event such an amount is not included for the Fund in the general appropriation act enacted by the 1994 Session of the General Assembly. Such treasury loan shall be repaid from the Commonwealth's portion of the state recordation tax imposed by Chapter 8 (§ 58.1-800 et seq.) of Title 58.1 designated for the Fund by this section and § 58.1-816.

§ 33.2-2401. Northern Virginia Transportation District Program.

A. The General Assembly declares it to be in the public interest that the economic development needs and economic growth potential of Northern Virginia be addressed by a special transportation program to provide for the costs of providing an adequate, modern, safe, and efficient transportation network in Northern Virginia that shall be known as the Northern Virginia Transportation District Program (the Program), including environmental and engineering studies, rights-of-way acquisition, construction, improvements to all modes of transportation, and financing costs. The Program consists of the following projects: the Fairfax County Parkway, the Route 234 Bypass, Metrorail capital improvements attributable to Fairfax County including Metro parking expansions, Metrorail capital improvements including the Franconia-Springfield Metrorail Station and new rail car purchases, the Route 7 improvements in Loudoun County and Fairfax County, the Route 50/Courthouse Road interchange improvements in Arlington County, the Route 28/Route 625 interchange improvements in Loudoun County, Metrorail capital improvements attributable to the City of Alexandria including the King Street Metrorail Station access, Metrorail capital improvements attributable to Arlington County including Ballston Station improvements, the Route 15 safety improvements in Loudoun County, the Route 28 parallel roads in Loudoun County, the Route 28/Sterling Boulevard interchange in Loudoun County, the Route 1/Route 123 interchange improvements in Prince William County, the Lee Highway improvements in the City of Fairfax, the Route 123 improvements in Fairfax County, the Telegraph Road improvements in Fairfax County, the Route 123 Occoquan River Bridge, Gallows Road in Fairfax County, the Route 1/Route 234 interchange improvements in Prince William County, the Potomac-Rappahannock Transportation Commission bus replacement program, and the Dulles Corridor Enhanced Transit program.

B. Allocations to the Program from the Northern Virginia Transportation District Fund established by § 33.2-2400 shall be made annually by the Commonwealth Transportation Board for the creation and enhancement of a safe and efficient transportation system connecting the communities, businesses, places of employment, and residences of the Commonwealth, thereby enhancing the economic development potential, employment opportunities, mobility, and quality of life in the Commonwealth.

C. Except in the event that the Northern Virginia Transportation District Fund is insufficient to pay for the costs of the Program, allocations to the Program shall not diminish or replace allocations made from other sources or diminish allocations to which any district, system, or locality would be entitled under other provisions of this title but shall be supplemental to other allocations to the end that transportation improvements in the Northern Virginia Transportation District may be accelerated and augmented. Allocations under this subsection shall be limited to projects specified in subdivision 12 of § 33.2-1700.

D. The Commonwealth Transportation Board may expend such funds from all sources as may be lawfully available to initiate the Program and to support bonds and other obligations referenced in subsection E.

E. The Commonwealth Transportation Board is authorized to receive, dedicate, or use (i) first from revenues received from the Northern Virginia Transportation District Fund; (ii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located; (iii) to the extent required, legally available revenues of the Transportation Trust Fund; and (iv) such other funds that may be appropriated by the General Assembly for the payment of bonds or other obligations, including interest thereon, issued in furtherance of the Program. No such bond or other obligations shall pledge the full faith and credit of the Commonwealth.

CHAPTER 25.

NORTHERN VIRGINIA TRANSPORTATION AUTHORITY.

§ 33.2-2500. Northern Virginia Transportation Authority created.

There is hereby created a political subdivision of the Commonwealth known as the Northern Virginia Transportation Authority, for purposes of this chapter referred to as "the Authority."

In addition to such other powers vested in the Authority by this chapter, the Authority shall have the following powers and functions:

1. The Authority shall prepare a regional transportation plan for Planning District 8 that includes transportation improvements of regional significance and those improvements necessary or incidental thereto and shall revise and amend the plan. The provisions of Article 7 (§ 33.2-1928 et seq.) of Chapter 19 shall apply, mutatis mutandis, to preparation of such transportation plan.

2. The Authority may, when a transportation plan is adopted according to subdivision 1, construct or acquire, by purchase, lease, contract, or otherwise, the transportation facilities specified in such transportation plan.

3. The Authority may enter into agreements or leases with public or private entities for the operation of its facilities or may operate such facilities itself.

4. The Authority may enter into contracts or agreements with the counties and cities embraced by the Authority, with other transportation commissions of transportation districts adjoining any county or city embraced by the Authority, with any transportation authority, or with any federal, state, local, or private entity to provide, or cause to be provided, transportation facilities and services to the area embraced by the Authority. Such contracts or agreements, together with any agreements or leases for the operation of such facilities, may be used by the Authority to finance the construction and operation of transportation facilities and such contracts, agreements, or leases shall inure to the benefit of any creditor of the Authority.

Notwithstanding subdivisions 1 through 4, the Authority shall not have the power to regulate services provided by taxicabs, either within municipalities or across municipal boundaries; such regulation is expressly reserved to the municipalities within which taxicabs operate.

5. Notwithstanding any other provision of law to the contrary, the Authority may:

a. Acquire land or any interest therein by purchase, lease, or gift and provide transportation facilities thereon for use in connection with any transportation service;

b. Acquire land or any interest therein by purchase, lease, or gift in advance of the need for sale or contribution to an agency, for use by that agency in connection with an adopted transportation plan; and

c. Prepare a plan for mass transportation services with persons, counties, cities, agencies, authorities, or transportation commissions and may further contract with any such person or entity to provide necessary facilities, equipment, operations and maintenance, access, and insurance pursuant to such plan.

§ 33.2-2501. Counties and cities embraced by the Authority.

The Authority shall embrace the Counties of Arlington, Fairfax, Loudoun, and Prince William and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

§ 33.2-2502. Composition of Authority; membership; terms.

The Authority shall consist of 17 members as follows:

1. The chief elected officer of the governing body of each county and city embraced by the Authority or, in the discretion of the chief elected officer, his designee, who shall be a current elected officer of such governing body;

2. Two members of the House of Delegates who reside in different counties or cities embraced by the Authority, appointed by the Speaker of the House and, to the extent practicable, from the membership of the House Committee on Appropriations, the House Committee on Finance, or the House Committee on Transportation;

3. One member of the Senate who resides in a county or city embraced by the Authority, appointed by the Senate Committee on Rules and, to the extent practicable, from the membership of the Senate Committee on Finance and the Senate Committee on Transportation;

4. Two nonlegislative citizen members who reside in different counties or cities embraced by the Authority, appointed by the Governor. One such gubernatorial appointment shall be a member of the Commonwealth Transportation Board and one shall be a person who has significant experience in transportation planning, finance, engineering, construction, or management; and

5. The following three persons who shall serve as nonvoting ex officio members of the Authority: the Director of the Virginia Department of Rail and Public Transportation, or his designee; the Commissioner of Highways, or his designee; and the chief elected officer of one town in a county embraced by the Authority to be chosen by the Authority.

All members of the Authority shall serve terms coincident with their terms of office, except that the gubernatorial appointee who is not a member of the Board shall serve for a term of four years. A vacancy occurring other than by expiration of a term shall be filled for the unexpired term. Vacancies shall be filled in the same manner as the original appointments.

The Authority shall appoint a chairman and vice-chairman from among its members.

§ 33.2-2503. Staff.

The Authority shall employ a chief executive officer and such staff as it shall determine to be necessary to carry out its duties and responsibilities under this chapter. No such person shall contemporaneously serve as a member of the Authority. The Department of Transportation and the Department of Rail and Public Transportation shall make their employees available to assist the Authority, upon request.

§ 33.2-2504. Decisions of Authority.

A majority of the Authority, which majority shall include at least a majority of the representatives of the counties and cities embraced by the Authority, shall constitute a quorum. Decisions of the Authority shall require a quorum and shall be in accordance with voting procedures established by the Authority. In all cases, decisions of the Authority shall require the affirmative vote of two-thirds of the members of the Authority present and voting and two-thirds of the representatives of the counties and cities embraced by the Authority who are present and voting and whose counties and cities include at least two-thirds of the population embraced by the Authority; however, no motion to fund a specific facility or service shall fail because of this population criterion if such facility or service is not located or to be located or provided or to be provided within the county or city whose representative's sole negative vote caused the facility or service to fail to meet the population criterion. The population of counties and cities embraced by the Authority shall be the population as determined by the most recently preceding decennial census, except that on July 1 of the fifth year following such census, the population of each county and city shall be adjusted, based on population projections made by the Weldon Cooper Center for Public Service of the University of Virginia.

§ 33.2-2505. Allocation of certain Authority expenses among component counties and cities.

The administrative expenses of the Authority as provided in an annual budget adopted by the Authority, to the extent funds for such expenses are not provided from other sources, shall be allocated among the component counties and cities on the basis of the relative population, as determined pursuant to § 33.2-2504.

Such budget shall be limited solely to the administrative expenses of the Authority and shall not include any funds for construction or acquisition of transportation facilities or for the performance of any transportation service.

§ 33.2-2506. Payment to members of Authority.

The members of the Authority may be paid for their services compensation in either (i) the amount provided in the general appropriation act for members of the General Assembly engaged in legislative business between sessions or (ii) a lesser amount as determined by the Authority. Members may be reimbursed for all reasonable and necessary expenses as provided in §§ 2.2-2813 and 2.2-2825, if approved by the Authority. Funding for the costs of compensation and expenses of the members shall be provided by the Authority.

§ 33.2-2507. Formation of advisory committees.

A. The Authority shall have a technical advisory committee, consisting of nine individuals who reside or are employed in counties and cities embraced by the Authority and have experience in transportation planning, finance, engineering, construction, or management. Six members shall be appointed by localities embraced by the Authority and three members shall be appointed by the Chairman of the Commonwealth Transportation Board. The technical advisory committee shall advise and provide recommendations on the development of projects as required by § 33.2-2508 and funding strategies and other matters as directed by the Authority.

B. The Authority also shall have a planning coordination advisory committee that shall include at least one elected official from each town that is located in any county embraced by the Authority and receives street maintenance payments under § 33.2-319.

C. The Authority may form additional advisory committees.

§ 33.2-2508. Responsibilities of Authority for long-range transportation planning.

The Authority shall be responsible for long-range transportation planning for regional transportation projects in Northern Virginia. In carrying out this responsibility, the Authority shall, on the basis of a regional consensus whenever possible, set regional transportation policies and priorities for regional transportation projects. The policies and priorities shall be guided by performance-based criteria such as the ability to improve travel times, reduce delays, connect regional activity centers, improve safety, improve air quality, and move the most people in the most cost-effective manner.

§ 33.2-2509. Northern Virginia Transportation Authority Fund.

There is hereby created in the state treasury a special nonreverting fund for Planning District 8 to be known as the Northern Virginia Transportation Authority Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All revenues dedicated to the Fund pursuant to §§ 58.1-638, 58.1-802.2, and 58.1-1742, any other funds that may be appropriated by the General Assembly, and any funds that may be received for the credit of the Fund from any other source shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

The amounts dedicated to the Fund pursuant to §§ 58.1-638, 58.1-802.2, and 58.1-1742 shall be deposited monthly by the Comptroller into the Fund and thereafter distributed to the Northern Virginia Transportation Authority as soon as practicable for use in accordance with § 33.2-2510. If the Authority determines that such moneys distributed to it exceed the amount required to meet the current needs and demands to fund transportation projects pursuant to § 33.2-2510, the Authority may invest such excess moneys to the same extent as provided in subsection A of § 33.2-1525 for excess funds in the Transportation Trust Fund.

The amounts deposited into the Fund and the distribution and expenditure of such amounts shall not be used to calculate or reduce the share of federal, state, or local revenues otherwise available to participating jurisdictions. Further, such revenues and moneys shall not be included in any computation of, or formula for, a locality's ability to pay for public education, upon which appropriations of state revenues to local governments for public education are determined.

§ 33.2-2510. Use of certain revenues by the Authority.

A. All moneys received by the Authority and the proceeds of bonds issued pursuant to § 33.2-2511 shall be used by the Authority solely for transportation purposes benefiting those counties and cities that are embraced by the Authority.

B. 1. Except as provided in subdivision 2, 30 percent of the revenues received by the Authority under subsection A shall be distributed on a pro rata basis, with each locality's share being the total of such fee and taxes received by the Authority that are generated or attributable to the locality divided by the total of such fee and taxes received by the Authority. Of the revenues distributed pursuant to this subsection, as determined solely by the applicable locality, such revenues shall be used for additional urban or secondary highway construction, for other capital improvements that reduce congestion, for other transportation capital improvements that have been approved by the most recent long-range transportation plan adopted by the Authority, or for public transportation purposes. None of the revenue distributed by this subsection may be used to repay debt issued before July 1, 2013. Each locality shall create a separate, special fund in which all revenues received pursuant to this subsection and from the tax imposed pursuant to § 58.1-3221.3 shall be deposited. Each locality shall provide annually to the Northern Virginia Transportation Authority sufficient documentation as required by the Authority showing that the funds distributed under this subsection were used as required by this subsection.

2. If a locality has not deposited into its special fund (i) revenues from the tax collected under § 58.1-3221.3 pursuant to the maximum tax rate allowed under that section or (ii) an amount, from sources other than moneys received from the Authority, that is equivalent to the revenue that the locality would receive if it was imposing the maximum tax authorized by § 58.1-3221.3, then the amount of revenue distributed to the locality pursuant to subdivision 1 shall be reduced by the difference between the amount of revenue that the locality would receive if it was imposing the maximum tax authorized by such section and the amount of revenue deposited into its special fund pursuant to clause (i) or (ii), as applicable. The amount of any such reduction in revenue shall be redistributed according to subsection C. The provisions of this subdivision shall be ongoing and apply over annual periods as determined by the Authority.

C. 1. The remaining 70 percent of the revenues received by the Authority under subsection A, plus the amount of any revenue to be redistributed pursuant to subsection B, shall be used by the Authority solely to fund (i) transportation projects selected by the Authority that are contained in the regional transportation plan in accordance with § 33.2-2500 and that have been rated in accordance with § 33.2-257 or (ii) mass transit capital projects that increase capacity. For only those regional funds received in fiscal year 2014, the requirement for rating in accordance with § 33.2-257 shall not apply. The Authority shall give priority to selecting projects that are expected to provide the greatest congestion reduction relative to the cost of the project and shall document this information for each project selected. Such projects selected by the Authority for funding shall be located (a) only in localities embraced by the Authority or (b) in adjacent localities but only to the extent that such extension is an insubstantial part of the project and is essential to the viability of the project within the localities embraced by the Authority.

2. All transportation projects undertaken by the Northern Virginia Transportation Authority shall be completed by private contractors accompanied by performance measurement standards, and all contracts shall contain a provision granting the Authority the option to terminate the contract if contractors do not meet such standards. Notwithstanding the foregoing, any locality may provide engineering services or right-of-way acquisition for any project with its own forces. The Authority shall avail itself of the strategies permitted under the Public-Private Transportation Act (§ 33.2-1800 et seq.) whenever feasible and advantageous. The Authority is independent of any state or local entity, including the Department and the Commonwealth Transportation Board, but the Authority, the Department, and the Commonwealth Transportation Board shall consult with one another to avoid duplication of efforts and, at the option of the Authority, may combine efforts to complete specific projects. Notwithstanding the foregoing, at the request of the Authority, the Department may provide the Authority with engineering services or right-of-way acquisition for the project with its own forces.

3. With regard to the revenues distributed under subdivision 1, each locality's total long-term benefit shall be approximately equal to the proportion of the total of the fees and taxes received by the Authority that are

generated by or attributable to the locality divided by the total of such fees and taxes received by the Authority.

D. For road construction and improvements pursuant to subsection B, the Department may, on a reimbursement basis, provide the locality with planning, engineering, right-of-way, and construction services for projects funded in whole by the revenues provided to the locality by the Authority.

§ 33.2-2511. Authority to issue bonds.

The Authority may issue bonds and other evidences of debt as may be authorized by this section or other law. The provisions of Article 5 (§ 33.2-1920 et seq.) of Chapter 19 shall apply, mutatis mutandis, to the issuance of such bonds or other debt. The Authority may issue bonds or other debt in such amounts as it deems appropriate. The bonds may be supported by any funds available except that funds from tolls collected pursuant to subdivision 7 of § 33.2-2512 shall be used only as provided in that subdivision.

§ 33.2-2512. Other duties and responsibilities of Authority.

In addition to other powers granted in this chapter, the Authority shall have the following duties and responsibilities:

1. Providing general oversight of regional programs involving mass transit or congestion mitigation, including carpooling, vanpooling, and ridesharing;

2. Providing long-range regional planning, both financially constrained and unconstrained;

3. Recommending to federal, state, and regional agencies regional transportation priorities, including public-private transportation projects and funding allocations;

4. Developing, in coordination with affected counties and cities, regional priorities and policies to improve air quality;

5. Allocating to priority regional transportation projects funds made available to the Authority and, at the discretion of the Authority, directly overseeing such projects;

6. Recommending to the Commonwealth Transportation Board priority regional transportation projects for receipt of federal and state funds;

7. Imposing, collecting, and setting the amount of tolls for use of facilities in the area embraced by the Authority, when the facility is either newly constructed or reconstructed solely with revenues of the Authority or solely with revenues under the control of the Authority in such a way as to increase the facility's traffic capacity, with the amount of tolls variable by time of day, day of the week, vehicle size or type, number of axles, or other factors as the Authority may deem proper, and with all such tolls to be used for programs and projects that are reasonably related to or benefit the users of the applicable facility, including for the debt service and other costs of bonds whose proceeds are used for such construction or reconstruction;

8. Providing general oversight of regional transportation issues of a multijurisdictional nature, including intelligent transportation systems, signalization, and preparation for and response to emergencies;

9. Serving as an advocate for the transportation needs of Northern Virginia before the state and federal governments;

10. Applying to and negotiating with the government of the United States, the Commonwealth, or any agency, instrumentality, or political subdivision thereof for grants and other funds available to carry out the purposes of this chapter and receiving, holding, accepting, and administering from any source gifts, bequests, grants, aid, or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of this chapter subject, however, to any condition upon which gifts, bequests, grants, aid, or contributions are made. Unless otherwise restricted by the terms of the gift, bequest, or grant, the Authority may sell, exchange, or otherwise dispose of such money, securities, or other property given or bequeathed to it in furtherance of its purposes;

11. Acting as a "responsible public entity" for the purpose of the acquisition, construction, improvement, maintenance, or operation, or any combination thereof, of a "qualifying transportation facility" under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.); and

12. Deciding on and voting to impose certain fees and taxes authorized under law for imposition or assessment by the Authority, provided that any such fee or tax assessed or imposed is assessed or imposed in all counties and cities embraced by the Authority. The revenues from such certain fees and taxes shall be kept in a separate account and shall be used only for the purposes provided in this chapter.

CHAPTER 26.

HAMPTON ROADS TRANSPORTATION FUND.

§ 33.2-2600. Hampton Roads Transportation Fund.

There is hereby created in the state treasury a special nonreverting fund for Planning District 23 to be known as the Hampton Roads Transportation Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All revenues dedicated to the Fund pursuant to § 58.1-638 and Chapter 22.1 (§ 58.1-2291 et seq.) of Title 58.1 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. The moneys deposited in the Fund shall be used solely for new construction projects on new or existing roads, bridges, and tunnels in the localities comprising Planning District 23 as approved by the Hampton Roads Transportation Planning Organization. The Hampton Roads Transportation Planning Organization shall give priority to those projects that are expected to provide the greatest impact on reducing congestion and shall ensure that the moneys shall be used for such construction projects in all localities comprising Planning District 23.

The amounts dedicated to the Fund shall be deposited monthly by the Comptroller into the Fund. The amounts deposited into the Fund and the distribution and expenditure of such amounts shall not be used to calculate or reduce the share of federal, state, or local revenues otherwise available to participating localities. Further, such revenues and moneys shall not be included in any computation of, or formula for, a locality's ability to pay for public education, upon which appropriations of state revenues to local governments for public education are determined.

CHAPTER 27.

TRANSPORTATION DISTRICT WITHIN THE CITY OF CHARLOTTESVILLE AND THE COUNTY OF ALBEMARLE.

§ 33.2-2700. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Commission" means the governing body of the local transportation district created pursuant to this chapter.

"Cost" means all or any part of the cost of the following:

1. Acquisition, construction, reconstruction, alteration, landscaping, utilities, parking, conservation, remodeling, equipping, or enlarging of transportation improvements or any portion thereof;

2. Acquisition of land, rights-of-way, property rights, easements, and interests for construction, alteration, or expansion of transportation improvements;

3. Demolishing or relocating any structure on land so acquired, including the cost of acquiring any lands to which such structure may be relocated;

4. All labor, materials, machinery, and equipment necessary or incidental to the construction or expansion of a transportation improvement;

5. Financing charges, insurance, interest, and reserves for interest on all bonds prior to and during construction and, if deemed advisable by the commission, for a reasonable period after completion of such construction;

6. Reserves for principal and interest;

7. Reserves for extensions, enlargements, additions, replacements, renovations, and improvements;

8. Provisions for working capital;

9. Engineering and architectural expenses and services, including surveys, borings, plans, and specifications;

10. Subsequent addition to or expansion of any project and the cost of determining the feasibility or practicability of such construction;

11. Financing construction of, addition to, or expansion of transportation improvements and placing them in operation; and

12. Expenses incurred in connection with the creation of the district, not to exceed $150,000.

"District" means the district created pursuant to this chapter.

"District advisory board" or "advisory board" means the board appointed pursuant to this chapter.

"Federal agency" means the United States of America or any department, bureau, agency, or instrumentality thereof.

"Locality" means the City of Charlottesville or the County of Albemarle.

"Owner" or "landowner" means the person that has the usufruct, control, or occupation of the taxable real property as determined, pursuant to § 58.1-3281, by the commissioner of the revenue of the locality in which the subject real property is located.

"Revenue" means any or all fees, tolls, rents, receipts, assessments, taxes, money, and income derived by the district, including any cash contribution or payments made to the district by the Commonwealth, any political subdivision thereof, or any other source.

"Transportation improvements" means any real or personal property acquired, constructed, improved, or used in constructing or improving any highway, or portion or interchange thereof, including parking facilities located within a district created pursuant to this chapter. "Transportation improvements" includes public highways and all buildings, structures, approaches, and facilities thereof and appurtenances thereto, rights-of-way, bridges, tunnels, and all related equipment and fixtures.

§ 33.2-2701. Creation of district.

A. A district may be created in the City of Charlottesville and the County of Albemarle by resolutions of such localities' governing bodies. Such resolutions shall be considered upon the petition to each governing body of a locality in which the proposed district by the owners of at least 51 percent of either the land area or the assessed value of land, in each locality that (i) is within the boundaries of the proposed district and (ii) has been zoned for commercial or industrial use or is used for such purposes.

B. The petition to the local governing bodies shall:

1. Set forth the name and describe the boundaries of the proposed district;

2. Describe the transportation improvements proposed within the district;

3. Propose a plan for providing such transportation improvements within the district and describe specific terms and conditions with respect to all commercial and industrial zoning classifications and uses, densities, and criteria related thereto that the petitioners request for the proposed district;

4. Describe the benefits that can be expected from the provision of such transportation improvements within the district; and

5. Request the local governing bodies to establish the proposed district for the purposes set forth in the petition.

C. Upon the filing of such a petition, each local governing body shall fix a day for a hearing on the question of whether the proposed district shall be created. The hearing shall consider whether the residents and owners of real property within the proposed district would benefit from the establishment of the proposed district. All interested persons who either reside in or own taxable real property within the proposed district shall have the right to appear and show cause why any property or properties should not be included in the proposed district. Such resolution shall be binding upon the local governing body with respect to the inclusion or exclusion of such properties within the proposed district. The petition shall comply with the provisions of this section with respect to minimum acreage or assessed valuation. Notice of the hearing shall be given by publication once a week for three consecutive weeks in a newspaper of general circulation within the locality. At least 10 days shall intervene between the third publication and the date set for the hearing.

D. If both local governing bodies find the creation of the proposed district would be in furtherance of their comprehensive plans for the development of the area, in the best interests of the residents and owners of real property within the proposed district, and in furtherance of the public health, safety, and welfare, both local governing bodies may pass resolutions that are reasonably consistent with the petition, creating the district and providing for the appointment of an advisory board in accordance with this chapter. The resolutions shall provide a description with specific terms and conditions of all commercial and industrial zoning classifications that shall be in force in the district upon its creation, together with all related criteria and a term of years, not to exceed 20 years, as to which each such zoning classification and each related criterion set forth therein shall remain in force within the district without elimination, reduction, or restriction, except

(i) upon the written request or approval of the owner of any property affected by a change or (ii) as specifically required to comply with federal or state law.

Each resolution creating the district shall also provide (a) that the district shall expire 35 years from the date upon which the resolution is passed or (b) that the district shall expire when the district is abolished in accordance with § 33.2-2714. After the public hearing, each local governing body shall deliver a certified copy of its proposed resolution creating the district to the petitioning landowners or their attorneys-in-fact. Any petitioning landowner may then withdraw his signature on the petition, in writing, at any time prior to the vote of the local governing body. In the case where any signature on the petition is withdrawn, the local governing body may pass the proposed resolution only upon certification that the petition continues to meet the provisions of this section. After both local governing bodies have adopted resolutions creating the district, the district shall be established and the name of the district shall be "The Charlottesville-Albemarle Transportation Improvement District."

§ 33.2-2702. Commission to exercise powers of the district.

The powers of the district created pursuant to this chapter shall be exercised by a commission. The commission shall consist of two members of the governing body of each locality in the district, appointed by the respective local governing body. In addition to the appointed members, the Chairman of the Commonwealth Transportation Board or his designee shall be a member of the commission of the district created pursuant to this chapter.

The commission shall elect a chairman from its membership. The chairman may be the chairman or presiding officer of a local governing body. In addition, the commission, with the advice of the district advisory board, shall elect a secretary and a treasurer, who may be members or employees of any local governing body or other governmental body. The offices of secretary and treasurer may be combined. A majority of the commission members shall constitute a quorum, and a majority vote shall be necessary for any action taken by the commission. No vacancy in the membership of the commission shall impair the right of a majority of the members to form a quorum or to exercise all of its rights, powers, and duties.

§ 33.2-2703. Powers and duties of commission.

The commission shall:

1. Construct, reconstruct, alter, improve, expand, make loans or otherwise provide financial assistance to, and operate transportation improvements in the district for the use and benefit of the public.

2. Acquire by gift, purchase, lease, in-kind contribution to construction costs, or otherwise transportation improvements in the district and sell, lease as lessor, transfer, or dispose of any part of transportation improvements in such manner and upon such terms as the commission may determine to be in the best interests of the district. However, prior to disposing of any such property or interest therein, the commission shall conduct a public hearing with respect to such disposition. At the hearing, the residents and owners of property within the district shall have an opportunity to be heard. At least 10 days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in the district, as prescribed by the commission. Such public hearing may be adjourned from time to time.

3. Invite bids or request proposals from and contract with any person, as authorized by law, with regard to any matter necessary and proper to provide transportation improvements, including the financing, acquisition, construction, reconstruction, alteration, improvement, expansion, or maintenance of transportation improvements in the district.

4. Enter into a continuing service contract for a purpose authorized by this chapter and make payments of the proceeds received from the special taxes levied pursuant to this chapter, together with any other revenues, for installments due under that service contract. The district may apply such payments annually during the term of that service contract in an amount sufficient to make the installment payments due under that contract, subject to the limitation imposed by this chapter. However, payments for any such service contract shall be conditioned upon the receipt of services pursuant to the contract. Such a contract shall not obligate a locality to make payments for services of the district.

5. Accept the allocations, contributions, or funds of any available source or reimburse from any available source, including any person, for the whole or any part of the costs, expenses, and charges incident to the

acquisition, construction, reconstruction, maintenance, alteration, improvement, and expansion of any transportation improvements in the district.

6. Contract for the extension and use of any highway into territory outside the district on such terms and conditions as the commission determines.

7. Employ and fix the compensation of personnel who may be deemed necessary for the construction, operation, or maintenance of any transportation improvements in the district.

8. Have prepared an annual audit of the district's financial obligations and revenues, and, upon review of such audit, request a tax rate adequate to provide tax revenues that, together with all other revenues, are required by the district to fulfill its annual obligations.

§ 33.2-2704. District advisory board.

Within 30 days after the establishment of the district under this chapter, the governing body from each locality within which any portion of the district is located shall appoint six members to a district advisory board. Three of the six members from each locality shall be chosen by the local governing body from nominations submitted to the local governing body by the petitioners. All members shall own or represent commercially or industrially zoned land within the district. Each member shall be appointed for a term of four years, except the initial appointment of advisory board members shall provide that the terms of three of the members shall be for two years. If a vacancy occurs with respect to an advisory board member initially appointed by a local governing body, or any successor of such a member, the local governing body shall appoint a new member who is a representative or owner of commercially or industrially zoned property within the local district. If a vacancy occurs with respect to an advisory board member initially nominated by the petitioners, or any successor thereof, the remaining advisory board members initially nominated by the petitioners, or their successors, shall nominate a new member for selection by the local governing body.

District advisory board members shall serve without pay, but the local governing body shall provide the advisory board with facilities for the holding of meetings, and the commission shall appropriate funds needed to defray the reasonable expenses and fees of the advisory board, which shall not exceed $20,000 annually, including expenses and fees arising out of the preparation of the annual report. Such appropriations shall be based on an annual budget submitted by the advisory board, and approved by the commission, sufficient to carry out its responsibilities under this chapter. The advisory board shall elect a chairman and a secretary and such other officers as it deems necessary. The advisory board shall fix the time for holding regular meetings and shall meet at least once every year. Special meetings of the advisory board shall be called by the chairman or by two members of the advisory board upon written request to the secretary of the advisory board. A majority of the members shall constitute a quorum.

The advisory board shall present an annual report to the commission on the transportation needs of the district and on the activities of the advisory board, and the advisory board shall present special reports on transportation matters as requested by the commission or the local governing body concerning taxes to be levied pursuant to this chapter.

§ 33.2-2705. Annual special improvements tax; use of revenues.

Upon the written request of the commission made concurrently to the local governing body or bodies pursuant to this chapter, each local governing body may levy and collect an annual special improvements tax on taxable real estate zoned for commercial or industrial use or used for such purposes and taxable leasehold interests in the portion of the improvement district that is within its jurisdiction. Notwithstanding the provisions of Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1, the tax shall be levied on the assessed fair market value of the taxable real property. The rate of the special improvements tax, when combined with all other special taxes in this Code of any kind imposed on land within the district, shall not be more than 25 cents ($0.25) per $100 of the assessed fair market value of any taxable real estate or the assessable value of taxable leasehold property as specified by § 58.1-3203; however, if all the owners in any district so request in writing, this limitation on rate shall not apply. Such special improvements taxes shall be collected at the same time and in the same manner as the locality's taxes are collected and the proceeds shall be kept in a separate account. The effective date of the initial assessment shall be January 1 of the year following adoption of the resolution creating the district. All revenues received by each locality pursuant to such taxes shall be paid to or at the direction of the district commission for its use pursuant to this chapter.

§ 33.2-2706. Agreements with Commonwealth Transportation Board; payment of special improvements tax to Transportation Trust Fund.

A. The district may contract with the Commonwealth Transportation Board for the Commonwealth Transportation Board to perform any purpose of the district.

The district may agree by contract to pay all or a portion of the special improvements tax to the Commonwealth Transportation Board.

Prior to executing any such contract, the district shall seek the agreement of each local governing body creating the district that the locality's officer charged with the responsibility for preparing the locality's annual budget shall submit in the budget for each fiscal year in which any Commonwealth of Virginia Transportation Contract Revenue Bonds issued for such district are outstanding, all amounts to be paid to the Commonwealth Transportation Board under such contract during such fiscal year.

If the amount required to be paid to the Commonwealth Transportation Board under the contract is not so paid for a period of 60 days after such amount is due, the Commonwealth Transportation Board shall, until such amount has been paid, withhold sufficient funds from funds appropriated and allocated, pursuant to Article 5 (§ 33.2-351 et seq.) of Chapter 3, to the highway construction district in which the transportation improvements covered by such contract are located or to such locality in which such transportation improvements are located and to use such funds to satisfy the contractual requirements.

B. While nothing in this chapter shall limit the authority of any locality to change the classification of property zoned for commercial or industrial use or used for such purpose upon the written request or approval of the owner of any property affected by such change after the effective date of any such contract, should a change in zoning classification so requested result in a shortfall in the total annual revenues from the imposition of the special improvements tax and the payments required to be made to the Commonwealth Transportation Board pursuant to the contract, the district shall request the local governing body to increase the rate of such tax by such amount up to the maximum authorized rate as may be necessary to prevent such shortfall. If, however, a deficit remains after any rezoning and adjustment of the tax rate or the rate is at the maximum authorized rate and cannot be increased, then the amount of funds otherwise appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project covered by such contract is located or to such county in which such project is located shall be reduced by the amount of such deficit and used to satisfy the deficit.

§ 33.2-2707. Jurisdiction of localities and officers, etc., not affected.

Neither the creation of a district nor any other provision in this chapter shall affect the power, jurisdiction, or duties of the respective local governing bodies; sheriffs; treasurers; commissioners of the revenue; circuit, district, or other courts; clerks of any court; magistrates; or any other state or local officer in regard to the area embraced in any district, or restrict or prevent any locality, town, or its governing body from imposing and collecting taxes or assessments for public improvements as permitted by law. Any locality that creates a district pursuant to this chapter may obligate itself with respect to the zoning ordinances, zoning ordinance text, and regulations relating thereto for all commercial and industrial classifications within the district as provided in this chapter for a term not to exceed 20 years from the date on which such district is created.

§ 33.2-2708. Allocation of funds to districts.

The governing body of either locality in which a district has been created pursuant to this chapter may advance funds or provide matching funds from money not otherwise specifically allocated or obligated. Such funds may be received or generated from whatever source, including general revenues, special fees and assessments, state allocations, and contributions from private sources to a local district to assist the local district to undertake the transportation improvements for which it was created. To assist the district with an approved transportation improvement, the Commonwealth Transportation Board may allocate to a district created pursuant to this chapter only funds allocated, pursuant to Article 5 (§ 33.2-351 et seq.) of Chapter 3, and subsection A of § 58.1-638, to the highway construction districts and localities in which such transportation district is located.

§ 33.2-2709. Reimbursement for advances to district.

To the extent that a locality has made advances to the district, the commission shall direct the district treasurer to reimburse the locality from district funds not otherwise specifically allocated or obligated.

§ 33.2-2710. Cooperation between districts and other political subdivisions.

Any district created pursuant to this chapter may enter into agreements with counties, cities, towns, or other political subdivisions of the Commonwealth for joint or cooperative action in accordance with the authority contained in § 15.2-1300.

§ 33.2-2711. Tort liability.

No pecuniary liability of any kind shall be imposed upon the Commonwealth or any locality or landowner therein because of any act, agreement, contract, tort, malfeasance, misfeasance, or nonfeasance by or on the part of a district or its agents, servants, or employees.

§ 33.2-2712. Approval by Commonwealth Transportation Board.

The district may not construct or improve a transportation improvement without the approval of both the Commonwealth Transportation Board and the locality in which the transportation improvement will be located. At the request of the commission, the Commissioner of Highways may exercise the powers of condemnation provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, Article 1 (§ 33.2-1000 et seq.) of Chapter 10, or § 33.2-705, for the purpose of acquiring property for transportation improvements within the district.

Upon completion of such construction or improvement, the Commonwealth Transportation Board shall take any affected public highway into the appropriate state highway system for purposes of maintenance and subsequent improvements as necessary. Upon acceptance by the Commonwealth of such highway into a state highway system, all rights, title, and interest in the rights-of-way and improvements of any affected highway shall vest in the Commonwealth. Upon completion of construction or improvement of a mass transit system, all rights, title, and interest in the rights-of-way and improvements of such mass transit system shall vest in an agency or instrumentality of the Commonwealth designated by the Commonwealth Transportation Board.

§ 33.2-2713. Enlargement of district.

The district shall be enlarged by resolution of the governing body of the locality upon the petitions of the district commission and the owners of at least 51 percent of either the land area or assessed value of land of the district within each locality, and the owners of at least 51 percent of either the land area or assessed value of land located within the territory sought to be added to the district. However, any such territory shall be contiguous to the existing district. The petition shall present the information required by § 33.2-2001. Upon receipt of such a petition, the locality shall use the standards and procedures provided in § 33.2-2001, except that the residents and owners of both the existing district and the area proposed for the enlargement shall have the right to appear and show cause why any property should not be included in the proposed district.

If the local governing body finds the enlargement of a local district would be in accordance with the applicable comprehensive plan and transportation improvement program for the development of the area, in the best interests of the residents and owners of the property within the proposed district, and in furtherance of the public health, safety, and general welfare, and if the local governing body finds that enlargement of the district does not limit or adversely affect the rights and interests of any party that has contracted with the district, the governing body of a locality may pass a resolution providing for the enlargement of the district.

§ 33.2-2714. Abolition of local transportation districts.

A. Any district created pursuant to this chapter may be abolished by resolutions passed by each local governing body within whose locality any portion of the district lies, upon the joint petition of the commission and the owners of at least 51 percent of the land area located within the district in each locality. Joint petitions shall:

1. State whether the purposes for which the district was formed have been substantially achieved;

2. State whether all obligations incurred by the district have been fully paid;

3. Describe the benefits that can be expected from the abolition of the district; and

4. Request each affected local governing body to abolish the district.

B. Upon receipt of such a petition, each local governing body, in considering the abolition of the district, shall use the standards and procedures described in § 33.2-2001 mutatis mutandis, except that all interested

persons who either reside on or own real property within the boundaries of the district shall have the right to appear and show cause why the district should not be abolished.

C. If each local governing body finds that (i) the abolition of the district is in accordance with the applicable locality's comprehensive plan for the development of the area; (ii) the abolition of the district is in the best interests of the residents and owners of the property within the district; (iii) the abolition of the district is in furtherance of the public health, safety, and welfare; and (iv) all debts of the district have been paid and the purposes of the district either have been, or should not be, fulfilled or finds that each local governing body with the approval of the voters of each locality has agreed to assume the debts of the district, then each local governing body may pass a resolution abolishing the district and the district advisory board. Upon abolition of the district, the title to all funds and properties owned by the district at the time of such dissolution shall vest in the locality in which the district or portion thereof was located.

§ 33.2-2715. Chapter to constitute complete authority for acts authorized; liberal construction.

This chapter shall constitute complete authority for the district to take the actions authorized in this chapter. This chapter, being necessary for the welfare of the Commonwealth and its inhabitants, shall be liberally construed to effect its purposes. Any court test concerning the validity of any bonds that may be issued for transportation improvements made pursuant to this chapter may be determined pursuant to Article 6 (§ 15.2-2650 et seq.) of Chapter 26 of Title 15.2.

CHAPTER 28.

CHARLOTTESVILLE-ALBEMARLE REGIONAL TRANSIT AUTHORITY.

§ 33.2-2800. Charlottesville-Albemarle Regional Transit Authority created.

There is hereby created a political subdivision of the Commonwealth known as the Charlottesville-Albemarle Regional Transit Authority, for purposes of this chapter referred to as "the Authority."

§ 33.2-2801. Powers of the Charlottesville-Albemarle Regional Transit Authority.

The Authority is hereby granted all powers necessary or appropriate to carry out the purposes of this chapter, including the power and authority to:

1. Prepare a regional transit plan for all or a portion of the areas located within the boundaries of each member locality. The regional transit plan may include all or portions of those areas within the City of Charlottesville and the County of Albemarle, shall include transit improvements of regional significance and those improvements necessary or incidental thereto, and shall be revised and amended;

2. When a transit plan is adopted according to subdivision 1, construct or acquire, by purchase, lease, contract, or otherwise, the transit facilities specified in such transit plan;

3. Make, assume, and enter into all contracts, agreements, arrangements, and leases with public or private entities as the Authority may determine are necessary or incidental to the operation of its facilities or to the execution of the powers granted by this chapter or may operate such facilities itself;

4. Enter into contracts or agreements with the counties and cities embraced by the Authority, with other transit commissions of transportation districts adjoining any county or city embraced by the Authority, with any transportation authority, or with any federal, state, local, or private entity to provide, or cause to be provided, transit facilities and services to the area embraced by the Authority. Such contracts or agreements, together with any agreements or leases for the operation of such facilities, may be used by the Authority to finance the construction and operation of transit facilities, and such contracts, agreements, or leases shall inure to the benefit of any creditor of the Authority;

5. Notwithstanding any other provision of law to the contrary:

a. Acquire land or any interest therein by purchase, lease, or gift and provide transit facilities thereon for use in connection with any transit service; and

b. Prepare a plan for mass transit services with persons, counties, cities, agencies, authorities, or transportation commissions and contract with any such person or other entity to provide necessary facilities, equipment, operations and maintenance, access, and insurance pursuant to such plan;

6. Adopt, amend, or repeal bylaws, rules, and regulations not inconsistent with this chapter or the general laws of the Commonwealth for the regulation of its affairs and the conduct of its business and carry into effect its powers and purposes;

7. Adopt an official seal and alter it;

8. Maintain an office at such place or places as it designates;

9. Sue and be sued;

10. Determine and set fees, rates, and charges for transit services;

11. Establish retirement, group life insurance, and group accident and sickness insurance plans or systems for its employees in the same manner as localities are permitted under §§ 51.1-801 and 51.1-802;

12. Provide by resolution for the issuance of revenue bonds of the Authority for the purpose of paying the whole or any part of the cost of operating any transit system. Revenue bonds issued under the provisions of this chapter shall not constitute a pledge of the faith and credit of the Commonwealth or of any political subdivision. All bonds shall contain a statement on their face substantially to the effect that neither the faith and credit of the Commonwealth nor the faith and credit of any political subdivision are pledged to the payment of the principal of or the interest on the bonds. The issuance of revenue bonds under the provisions of this chapter shall neither directly nor indirectly nor contingently obligate the Commonwealth or any political subdivision to levy any taxes or to make any appropriation for their payment except from the funds pledged under the provisions of this chapter;

13. Appoint, employ, or engage such officers, employees, architects, engineers, attorneys, accountants, financial advisors, investment bankers, and other advisors, consultants, and agents as may be necessary or appropriate and pay compensation and fix their duties; and

14. Contract with any participating political subdivision for such subdivision to provide legal services; engineering services; depository and accounting services, including an annual independent audit; and procurement of goods and services and act as fiscal agent for the Authority.

§ 33.2-2802. Counties and cities initially embraced by the Authority.

The Authority shall initially embrace the City of Charlottesville and all or such portions of the County of Albemarle as its governing body desires to have included. The City of Charlottesville and the County of Albemarle shall be the initial members of the Authority upon adoption of an approving ordinance or resolution by each of their respective governing bodies.

§ 33.2-2803. Joinder of other counties, agencies, institutions, and facilities.

The Counties of Fluvanna, Greene, Louisa, and Nelson may join the Authority, and the Authority shall embrace all or such portions as the governing body of each county desires to have covered. Additionally, private nonprofit tourist-driven agencies, higher education facilities of the Charlottesville-Albemarle area, and public transportation agencies serving such counties may join the Authority. The governing body of any county, agency, institution, or facility wishing to join the Authority and the governing bodies of the localities, agencies, institutions, and facilities then members of the Authority shall by concurrent resolution or ordinance or by agreement provide for the joinder of such county, agency, institution, or facility.

§ 33.2-2804. Governance of Authority; composition; terms.

The Authority shall be governed by a board of directors, for purposes of this chapter referred to as the "Authority Board," which shall consist of the following:

1. Two directors representing the County of Albemarle, each of whom shall be a member of the governing body of the county;

2. Two directors representing the City of Charlottesville, each of whom shall be a member of the governing body of the city;

3. One director representing each county that joins the Authority pursuant to § 33.2-2803, each of whom shall be a member of the governing body of each respective county; and

4. Up to four additional directors, who shall be nonvoting, representing the interests of such agencies, institutions, and facilities described in § 33.2-2803 that join the Authority.

All members of the Authority Board shall serve terms coincident with their terms of office. Vacancies shall be filled in the same manner as the original appointments.

The Authority Board shall appoint a chair and vice-chair from among its members.

§ 33.2-2805. Staff.

The Authority shall employ an executive director and such staff as it shall determine to be necessary to carry out its duties and responsibilities under this chapter. No such person shall contemporaneously serve as a

director of the Authority Board. The Department of Transportation and the Department of Rail and Public Transportation shall make their employees available to assist the Authority, upon request.

§ 33.2-2806. Decisions of Authority.

A majority of the Authority Board shall constitute a quorum. Decisions of the Authority Board shall require a quorum and shall be in accordance with voting procedures established by the Authority.

§ 33.2-2807. Allocation of certain Authority expenses.

The administrative expenses of the Authority, as provided in an annual budget adopted by the Authority, to the extent funds for such expenses are not provided from other sources, shall be allocated among the participating counties, city, agencies, institutions, and facilities pursuant to a funding formula as duly adopted by the Authority.

§ 33.2-2808. Payment to directors of the Authority Board.

The directors of the Authority Board may be paid for their services in either (i) the amount provided in the general appropriation act for members of the General Assembly engaged in legislative business between sessions or (ii) a lesser amount as determined by the Authority. Directors of the Authority Board may be reimbursed for all reasonable and necessary expenses as provided in §§ 2.2-2813 and 2.2-2825, if approved by the Authority. Funding for the costs of compensation and expenses of the directors of the Authority Board shall be provided by the Authority.

§ 33.2-2809. Formation of advisory committees.

The Authority may form advisory committees to assist the Authority.

§ 33.2-2810. Other duties and responsibilities of Authority.

In addition to other powers granted in this chapter, the Authority shall have the following duties and responsibilities:

1. Providing general oversight of Charlottesville-Albemarle area programs involving mass transit or congestion mitigation;

2. Providing long-range transit planning in the Charlottesville-Albemarle area, both financially constrained and unconstrained;

3. Recommending to federal, state, and regional agencies regional transit priorities, including public-private transit projects and funding allocations;

4. Allocating to priority regional transit projects any funds made available to the Authority and, at the discretion of the Authority, directly overseeing such projects;

5. Recommending to the Commonwealth Transportation Board priority regional transit projects for receipt of federal and state funds;

6. Serving as an advocate for the transit needs of the Charlottesville-Albemarle area before the federal and state governments; and

7. Applying to and negotiating with the government of the United States, the Commonwealth, or any agency or instrumentality thereof for grants and any other funds available to carry out the purposes of this chapter and receiving, holding, accepting, and administering from any source gifts, bequests, grants, aid, or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of this chapter subject, however, to any condition upon which gifts, bequests, grants, aid, or contributions are made. Unless otherwise restricted by the terms of the gift, bequest, or grant, the Authority may sell, exchange, or otherwise dispose of such money, securities, or other property given or bequeathed to it in furtherance of its purposes.

§ 33.2-2811. Withdrawal from the Authority.

A member of the Authority may withdraw from the participation in and the obligations of the Authority by a resolution or an ordinance of its governing body, and pursuant to such conditions and procedures adopted by the Authority. However, if the Authority has any outstanding bonds or other debt, no member may withdraw from the Authority without the unanimous consent of all the holders of such bonds unless such bonds have been paid or cashed or United States government obligations have been deposited for their payment.

§ 33.2-2812. Dissolution of the Authority.

Whenever the Authority Board by resolution determines that the purposes for which the Authority was formed have been substantially complied with and all bonds issued and all obligations incurred by the

Authority have been fully paid or adequate provisions have been made for the payment, the Authority Board shall execute and file for record with the participating localities, agencies, institutions, and facilities a resolution declaring such facts and providing for the disposition of the Authority assets, consistent with applicable state and federal law. If the participating localities, agencies, institutions, and facilities are of the opinion that the facts stated in the Authority's resolution are true and the Authority should be dissolved, they shall so resolve and the Authority shall stand dissolved as of the date on which the last participating locality, agency, institution, or facility adopts such resolution.

CHAPTER 29.

RICHMOND METROPOLITAN AUTHORITY.

§ 33.2-2900. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Authority" means the Richmond Metropolitan Authority created by § 33.2-2901 or, if the Authority is abolished, the board, body, commission, or agency succeeding to the principal functions thereof or on whom the powers given by this chapter to the Authority are conferred by law, but shall not include the City of Richmond or the Counties of Chesterfield and Henrico.

"Authority facility" means all facilities purchased, constructed, or otherwise acquired by the Authority pursuant to the provisions of this chapter and all extensions and improvements thereof.

"Bonds" or "revenue bonds" means revenue bonds or revenue refunding bonds of the Authority issued under the provisions of this chapter.

"Cost," as applied to any project, includes the cost of construction, landscaping, and conservation; the cost of acquisition of all land, rights-of-way, property, rights, easements, and interests acquired by the Authority for such construction, landscaping, and conservation; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved; the cost of all machinery and equipment; the cost of financing charges and interest prior to and during construction and for a period of time after completion of construction as deemed advisable by the Authority; the cost of traffic estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenues, and other expenses necessary or incident to determining the feasibility or practicability of constructing the project; the cost of administrative expenses; and the cost of payments to the Department or others for services during the period of construction, initial working capital, debt service reserves, and such other expenses as may be necessary or incident to the construction of the project, the financing of such construction, and the placing of the project in operation. Any obligation or expense incurred by the Commonwealth Transportation Board or by the City of Richmond or the County of Henrico or Chesterfield, before or after the effective date of this chapter, for surveys, engineering, borings, plans and specifications, legal and other professional and technical services, reports, studies, and data in connection with the construction of a project shall be repaid or reimbursed by the Authority and the amounts thereof shall be included as a part of the cost of the project.

"Limited access highway" means a highway specially designed for through traffic over or to which owners or occupants of abutting property or other persons have no easement of or right to light, air, view, or access by reason of the fact that their property abuts upon such highway, and access to which highway is controlled by the Authority, the Commonwealth, the City of Richmond, the County of Henrico, or the County of Chesterfield so as to give preference to through traffic by providing access connections with selected public highways only and by prohibiting crossings at grade or direct private driveway connections.

"Owner" includes all individuals, partnerships, associations, organizations, and corporations, the City of Richmond, the County of Henrico, the County of Chesterfield, and all public agencies and instrumentalities having any title to or interest in any property, rights, easements, and interests authorized to be acquired by this chapter.

"Project" means any single facility constituting an Authority facility, as described in the resolution or trust agreement providing for its construction, including extensions and improvements thereof.

"Public highways" shall include public highways, roads, and streets, whether maintained by the Commonwealth or the City of Richmond or the County of Henrico or Chesterfield.

"Revenues" means all fees, tolls, rents, rates, receipts, moneys, and income derived by the Authority through the ownership and operation of Authority facilities, and includes all cash contributions made to the Authority by the Commonwealth or any agency or department thereof, the City of Richmond, and the Counties of Henrico and Chesterfield not specifically dedicated by the contributor for a capital improvement.

§ 33.2-2901. Creation of the Richmond Metropolitan Authority.

There is hereby created a political subdivision and public body corporate and politic of the Commonwealth to be known as the Richmond Metropolitan Authority, to be governed by a board of directors consisting of 11 members appointed as follows: one member to be appointed by the Board of Supervisors of Chesterfield County for a period of two years from the date of appointment; one member to be appointed by the Board of Supervisors of Chesterfield County for a term of four years from the date of appointment; one member to be appointed by the Board of Supervisors of Henrico County for a period of two years from the date of appointment; one member to be appointed by the Board of Supervisors of Henrico County for a term of four years from the date of appointment; three members to be appointed by the Mayor of the City of Richmond with the approval of the City Council of the City of Richmond for terms of two years from the date of appointment; three members to be appointed by the Mayor of the City of Richmond with the approval of the City Council of the City of Richmond for a term of four years from the date of appointment; and one ex officio member from the Commonwealth Transportation Board to be appointed by the Commissioner of Highways. After initial appointments, the appointive members of the board of directors shall be appointed for terms of four years and until their successors have been appointed and are qualified. Vacancies in the membership of the board of directors shall be filled in the same manner as the original appointment for the unexpired portion of the term. The board of directors so appointed shall enter upon the performance of its duties and shall initially and annually elect a chairman and a vice-chairman from its membership and shall also elect annually a secretary or secretary-treasurer, who need not be a member of the board of directors. The chairman, or in his absence the vice-chairman, shall preside at all meetings of the board of directors, and in the absence of both the chairman and vice-chairman, the board of directors shall elect a chairman pro tempore who shall preside at such meetings. Six directors shall constitute a quorum, and all action by the board of directors shall require the affirmative vote of a majority of the directors present and voting. The members of the board of directors shall be entitled to reimbursement for expenses incurred in attendance upon meetings of the board of directors or while otherwise engaged in the discharge of their duties, and each member shall also be paid the sum of $50 per day for each day or portion thereof during which he is engaged in the performance of his duties. Such expenses and compensation shall be paid out of the treasury of the Authority in such manner as shall be prescribed by the Authority.

§ 33.2-2902. Powers of the Richmond Metropolitan Authority.

In order to alleviate highway congestion; promote highway safety; expand highway construction; increase the utility and benefits and extend the services of public highways, including bridges, tunnels, and other highway facilities, both free and toll; and otherwise contribute to the economy, industrial and agricultural development, and welfare of the Commonwealth and the City of Richmond and the Counties of Henrico and Chesterfield, the Authority shall have the following powers:

1. To contract and be contracted with; to sue and be sued; and to adopt, use, and alter at its pleasure a seal;

2. To acquire and hold real or personal property necessary or convenient for its purposes;

3. To sell, lease, or otherwise dispose of any personal or real property or rights, easements, or estates therein deemed by the Authority not necessary for its purposes;

4. To purchase, construct, or otherwise acquire, maintain, repair, and operate, or cause to be repaired, maintained, and operated, limited access highways within the corporate limits of the City of Richmond and the Counties of Chesterfield and Henrico, including all bridges, tunnels, overpasses, underpasses, grade separations, interchanges, entrance plazas, approaches, tollhouses, and administration, storage, and other buildings and facilities that the Authority may deem necessary or convenient for the operation of such limited access highways. Title to any property acquired by the Authority shall be taken in the name of the Authority;

5. With the approval of the City Council of the City of Richmond and the Boards of Supervisors of the Counties of Henrico and Chesterfield, to own, operate, maintain, and provide rapid and other transit facilities

and services for the transportation of the public; to enter into contracts with the City and the County or Counties and any public service corporations doing business as common carriers of passengers and property for the use of Authority facilities for such purpose; to enter into contracts for the transportation of passengers and property over facilities of localities other than those controlled by the Authority, as well as the property and facilities of the Authority; and to construct, acquire, operate, and maintain any other properties and facilities, including such offices and commercial facilities in connection therewith as are deemed necessary or convenient by the Authority, for the relief of traffic congestion, to provide vehicular parking, to promote transportation of persons and property, or to promote the flow of commerce that the City Council of the City of Richmond and the Boards of Supervisors of the Counties of Chesterfield and Henrico may request the Authority to provide;

6. With the approval of the City Council of the City of Richmond and the Boards of Supervisors of the Counties of Henrico and Chesterfield, to acquire land; to construct, own, and operate sports facilities of any nature, including facilities reasonably related thereto; to own a baseball stadium of sufficient seating capacity and quality for the playing of baseball at the level immediately below Major League Baseball; and to lease such land, stadium, sports facilities, and attendant facilities under such terms and conditions as the Authority may prescribe. In the event of a conflict between the provisions of this subdivision and any bond indenture to which the Authority is subject, the provisions of the bond indenture shall be controlling;

7. To acquire by the exercise of the power of eminent domain any lands, property rights, rights-of-way, franchises, easements, and other property, including public lands, parks, playgrounds, reservations, highways, or parkways, or parts thereof or rights therein, of any person, partnership, association, railroad, public service, public utility, or other corporation, or of any municipality, county, or other political subdivision, deemed necessary or convenient for the construction or the efficient operation of a project or necessary in the restoration, replacement, or relocation of public or private property damaged or destroyed whenever a reasonable price cannot be agreed upon with the governing body of such municipality, county, or other political subdivision as to such property owned by it or whenever the Authority cannot agree on the terms of purchase or settlement with the other owners because of the incapacity of such owners, because of the inability to agree on the compensation to be paid or other terms of settlement or purchase, or because such owners are nonresidents of the Commonwealth, are unknown, or are unable to convey valid title to such property. Such proceedings shall be in accordance with and subject to the provisions of any and all laws of the Commonwealth applicable to the exercise of the power of eminent domain in the name of the Commissioner of Highways and subject to the provisions of § 25.1-102 as fully as if the Authority were a corporation possessing the power of eminent domain. Title to any property condemned by the Authority shall immediately vest in the Authority, and the Authority shall be entitled to the immediate possession of such property upon the deposit with the clerk of the court in which such condemnation proceedings are originated of the total amount of the appraised price of the property and court costs and fees as provided by law, notwithstanding that any of the parties to such proceedings shall appeal from any decision in such condemnation proceeding. Whenever the Authority makes such deposit in connection with any condemnation proceeding, the making of such deposit shall not preclude the Authority from appealing any decision rendered in such proceedings. Upon the deposit with the clerk of the court of the appraised price, any person entitled thereto may, upon petition to the court, be paid his or their pro rata share of 90 percent of such appraised price. The acceptance of such payment shall not preclude such person from appealing any decision rendered in such proceedings. If the appraisement is greater or less than the amount finally determined by the decision in such proceeding or by an appeal, the amount of the increase or decrease shall be paid by or refunded to the Authority.

The terms "appraised price" and "appraisement" as used in this subdivision mean the value determined by two competent real estate appraisers appointed by the Authority for such purposes.

The acquisition of any such property by condemnation or by the exercise of the power of eminent domain shall be and is hereby declared to be a public use of such property;

8. To determine the location of any limited access highways constructed or acquired by the Authority, subject to the approval of the Commonwealth Transportation Board, and to determine the design standards and materials of construction of such highways;

9. To designate, with the approval of the Commonwealth Transportation Board, the location in the City of Richmond and in the Counties of Henrico and Chesterfield and establish, limit, and control points of ingress to and egress from any limited access highway constructed by the Authority within the corporate limits of the City of Richmond and the Counties of Henrico and Chesterfield as may be necessary or desirable in the judgment of the Authority to insure the proper operation and maintenance of such highway; to prohibit entrance to and exit from such highway from any point not so designated; and to construct, maintain, repair, and operate service roads connecting with points of ingress to and egress from such highway at such locations in the City of Richmond and in the Counties of Henrico and Chesterfield as may be designated by the Authority;

10. To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including contracts or agreements authorized by this chapter with the Commonwealth Transportation Board, the City of Richmond, and the Counties of Henrico and Chesterfield;

11. To construct grade separations at intersections of any limited access highway constructed by the Authority with public highways or other public ways or places and to change and adjust the lines and grades thereof so as to accommodate the same to the design of the grade separation. The cost of such grade separations and any damage incurred in changing and adjusting the lines and grades of such highways, ways, and places shall be ascertained and paid by the Authority as a part of the cost of such highway;

12. To vacate or change the location of any portion of any public highway or other public way or place, public utility, sewer, pipe, main, conduit, cable, wire, tower, pole, and other equipment and appliance of the Commonwealth, of the City of Richmond, or of the Counties of Henrico and Chesterfield, and to reconstruct the same in such new location as shall be designated by the Authority and of substantially the same type and in as good condition as the original highway, street, way, place, public utility, sewer, pipe, main, conduit, cable, wire, tower, pole, equipment, or appliance, with the cost of such reconstruction and any damage incurred in vacating or changing the location thereof ascertained and paid by the Authority as a part of the cost of the project in connection with such expenditures. Any public highway or other public way or place vacated or relocated by the Authority shall be vacated or relocated in the manner provided by law for the vacation or relocation of public highways, and any damages awarded on account thereof shall be paid by the Authority as a part of the cost of the project;

13. To enter upon any lands, waters, and premises for the purpose of making such surveys, soundings, borings, and examinations as the Authority may deem necessary or convenient for its purposes. Such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under any condemnation proceeding; however, the Authority shall pay any actual damage resulting to such lands, water, and premises as a result of such entry and activities;

14. To operate or permit the operation of vehicles for the transportation of persons or property for compensation on any limited access highway constructed or acquired by the Authority, provided that the Department of Motor Vehicles or the Federal Motor Carrier Safety Administration shall not be divested of jurisdiction to authorize or regulate the operation of such carriers;

15. To establish reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation, and removal of pipes, mains, sewers, conduits, cables, wires, towers, poles, and other equipment and appliances (public utility facilities) of the City of Richmond and the Counties of Henrico and Chesterfield and of public utility and public service corporations and of any person, firm, or other corporation rendering similar services, owning or operating public utility facilities in, on, along, over, or under highways constructed by the Authority. Whenever the Authority shall determine that it is necessary that any public utility facilities should be relocated or removed, the Authority may relocate or remove the public utility facilities in accordance with the regulations of the Authority, and the cost and expense of such relocation or removal, including the cost of installing the public utility facilities in a new location and the cost of any lands or any rights or interests in lands and any other rights acquired to accomplish such relocation or removal, shall be paid by the Authority as a part of the cost of such highway. The owner or operator of the public utility facilities may maintain and operate the public utility facilities with the necessary appurtenances in the new

location for as long a period and upon the same terms and conditions as it had the right to maintain and operate the public utility facilities in the former location;

16. To borrow money and issue bonds, notes, or other evidences of indebtedness for any of its corporate purposes, such bonds, notes, or other evidences of indebtedness to be payable solely from the revenues or other unencumbered funds available to the Authority that are pledged to the payment of such bonds, notes, or other evidences of indebtedness;

17. To fix, charge, and collect fees, tolls, rents, rates, and other charges for the use of Authority facilities and the parts or sections thereof;

18. To establish rules and regulations for the use of any Authority facilities as may be necessary or expedient in the interest of public safety with respect to the use of Authority facilities and property under the control of the Authority;

19. To employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, trustees, depositaries, paying agents, and such other employees and agents as may be necessary in the discretion of the Authority to construct, acquire, maintain, and operate Authority facilities and to fix their compensation;

20. To receive and accept from any federal agency for or in aid of the construction of any Authority facility or for or in aid of any Authority undertaking authorized by this chapter, and to receive and accept from the Commonwealth, the City of Richmond, or the Counties of Henrico and Chesterfield and from any other source, grants, contributions, or other aid in such construction or undertaking, or for operation and maintenance, either in money, property, labor, materials, or other things of value; and

21. To do all other acts and things necessary or convenient to carry out the powers expressly granted in this chapter.

§ 33.2-2903. Issuance of revenue bonds.

The Authority is hereby authorized to provide by resolution for the issuance of revenue bonds of the Authority for the purpose of paying all or any part of the cost of Authority facilities or any project or portion of such facilities. The principal of and interest on such bonds shall be payable solely from the revenues pledged for such payment. The bonds of each issue or series shall be dated, shall bear interest at such rate or rates not exceeding six percent per year, shall mature at such time or times not exceeding 50 years from the date or dates thereof, as may be determined by the Authority, and may contain provisions reserving the right of the Authority to redeem such bonds before maturity at such price or prices and upon such terms and conditions as may be fixed by the Authority in the resolution authorizing such bonds. Such bonds may be issued in coupon form, registered form, or both as prescribed by the Authority, and provisions may be made for the registration of coupon bonds as to principal only or as to both principal and interest and for the reconversion of registered bonds into coupon bonds. Such bonds may be issued in any denomination and may be made payable at any bank or trust company within or without the Commonwealth as the Authority may determine. Such bonds and the coupons attached to coupon bonds shall be signed in such manner either manually or by facsimile signature, as shall be determined by the Authority, and sealed with the seal of the Authority or a facsimile thereof. In case any officer whose signature or facsimile thereof shall appear on any bond or coupon shall cease to be such officer before the delivery of such bonds, such signature or such facsimile signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer or officers had remained in office until the delivery thereof. The Authority may sell such bonds in such manner either at public or private sale and for such price or prices as the Authority may determine, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than six percent per year, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, excluding from such computation the amount of any premium to be paid on the redemption of any bond prior to maturity. Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bond that has become mutilated, destroyed, or lost.

§ 33.2-2904. Rates and charges.

Whenever the Authority has constructed or otherwise acquired Authority facilities and has issued bonds for such purpose, the Authority shall fix, revise, charge, and collect fees, tolls, rents, rates, and other charges for the use of such facilities and the different parts or sections thereof, sufficient, together with any other moneys made available and used for that purpose, to pay the principal of and interest on such bonds, together with reserves for such purposes, and to maintain and operate such facilities and to keep the same in good condition and repair. Such fees, tolls, rents, rates, and other charges shall not be subject to supervision or regulation by any commission, board, bureau, or agency of the Commonwealth or of any municipality, county, or other political subdivision of the Commonwealth, and all revenues, when collected, and the proceeds from the sale of revenue bonds, shall be held by the Authority in trust for the benefit of the holders of bonds of the Authority issued for the construction or acquisition of Authority facilities and for properly maintaining, operating, and repairing the Authority facilities.

Revenue bonds issued under the provisions of this chapter shall not be deemed to constitute a debt of the Commonwealth, the City of Richmond, the County of Henrico, or the County of Chesterfield or a pledge of the full faith and credit of the Commonwealth, the City of Richmond, the County of Henrico, or the County of Chesterfield and shall be payable solely from the funds provided therefor from revenues.

§ 33.2-2905. Use of state highway maintenance and construction funds for Authority facilities.

Until all bonds of the Authority, including refunding bonds, and the interest thereon are paid in full, the Commonwealth Transportation Board may use any part of funds available for the maintenance of state highways in the construction district in which the Authority's facilities are wholly or partly located to provide for such portion of the operation, maintenance, and repair of the facilities of the Authority as is deemed in the public interest; however, no part of such funds shall be used for the facilities of the Authority unless the fees, tolls, rents, rates, and other charges for the use thereof are not sufficient to make the required payments of principal and interest on the outstanding revenue bonds issued in connection therewith, and to operate, maintain, and repair the same.

§ 33.2-2906. Refunding bonds.

The Authority is hereby authorized by resolution to provide for the issuance of refunding revenue bonds with which to refund outstanding revenue bonds or any issue or series of such outstanding bonds, which refunding revenue bonds may be issued at or before the maturity or redemption date of the bonds to be refunded, and to include different issues or series of such outstanding revenue bonds by a single issue of refunding revenue bonds, and to issue refunding revenue bonds to pay any redemption premium and interest to accrue and become payable on the outstanding revenue bonds being refunded to the date of payment or redemption, and to establish reserves for such refunding revenue bonds. Such refunding revenue bonds shall be payable solely from all or that portion of the revenues of the Authority facilities pledged to the payment thereof in the bond resolution pursuant to which such bonds were issued. Such refunding revenue bonds may, in the discretion of the Authority, be exchanged at par for the revenue bonds that are being refunded or may be sold at public or private sale in such manner and at such price as the Authority shall deem for the best interests of the Authority, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than six percent per year, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, excluding from such computation the amount of any premium to be paid on the redemption of any bonds prior to maturity, and may be issued and delivered at any time prior to the date of redemption or maturity date of the bonds to be refunded as the Authority determines to be in the best interests of the Authority. The interest rate or rates on refunding revenue bonds shall not be limited by the interest rate or rates borne by any of the revenue bonds to be refunded thereby. The proceeds derived from the sale of refunding revenue bonds issued under this chapter shall be invested in obligations of or guaranteed by the United States government pending the application of such proceeds to the purpose for which such refunding revenue bonds have been issued. To further secure such refunding revenue bonds, the Authority may contract with the purchasers thereof with respect to the safekeeping and application of the proceeds thereof and the safekeeping and application of the earnings of such investments. The determination of the Authority with respect to the financial soundness and advantage of the issuance and delivery of refunding revenue bonds authorized under this chapter shall be conclusive, but

nothing contained in this section shall require the holders of any outstanding revenue bonds being refunded to accept payment thereof otherwise than as provided in the outstanding bonds.

§ 33.2-2907. Trust agreement.

In the discretion of the Authority, any bonds issued under the provisions of this chapter may be secured by a trust agreement or indenture by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth, to be selected by the Authority in such manner as it may elect. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign all or any portion of the tolls and other revenues to be received by the Authority from the ownership and operation of Authority facilities, but shall not convey or mortgage any Authority facilities or any part thereof. It shall be lawful for any bank or trust company incorporated under the laws of the Commonwealth that may act as depositary of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Any such resolution, trust agreement, or indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action by bondholders. In addition to the foregoing, any such resolution, trust agreement, or indenture may contain such other provisions as the Authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the operation of the Authority facilities or portion thereof.

All or any portion of the revenues derived from the ownership and operation of Authority facilities, as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement or indenture securing such bonds, may be pledged to, and charged with, the payment of the principal of and the interest on such bonds as the payment shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the revenues or other moneys so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement nor indenture by which a pledge is created need be filed or recorded except in the records of the Authority.

§ 33.2-2908. Covenants to secure bonds.

Any resolution authorizing the issuance of bonds of the Authority may, for the benefit and security of the holders of such bonds, contain covenants by the Authority for such a purpose, including covenants as to, among other things:

1. The operation, maintenance, and repair of the Authority facilities;

2. The purposes to which the proceeds of the sale of such bonds may be applied and the use and disposition thereof;

3. The use and disposition of the revenues of the Authority derived from the ownership or operation of Authority facilities and additions, improvements, and extensions thereof, including the investment thereof and the creation and maintenance of reserve funds and funds for working capital and all renewals and replacements to Authority facilities;

4. The amount, if any, of additional revenue bonds payable from such revenues that may be issued and the terms and conditions on which such additional revenue bonds may be issued;

5. Fixing, maintaining, collection, and deposit of fees, tolls, rents, rates, and other charges for all the services sold, furnished, or supplied by the Authority facilities;

6. The operation, maintenance, repair, management, accounting, and auditing of the Authority;

7. Limitations upon the right of the Authority to dispose of Authority facilities or any part thereof without providing for the payment of the outstanding revenue bonds;

8. The appointment of trustees, depositaries, and paying agents within or without the Commonwealth to receive, hold, disburse, invest, or reinvest the proceeds derived from the sale of revenue bonds and all or any part of the revenues derived by the Authority from the operation, ownership, and management of the Authority facilities; and

9. Such other covenants and agreements as may be determined necessary in the discretion of the Authority to advantageously market the revenue bonds of the Authority.

§ 33.2-2909. Revenue bonds eligible for investment.

Bonds issued by the Authority under the provisions of this chapter are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions and all insurance companies, trust companies, banks, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital, in their control or belonging to them. Such bonds are also hereby made securities that may properly and legally be deposited with and received by any Commonwealth or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations is now or may hereafter be authorized by law.

§ 33.2-2910. Authority obligations to be negotiable instruments; enforcement of bonds.

Notwithstanding the provisions of this chapter, or any provision of law, any recital in any bond, any interim receipt, or any other obligation issued under the provisions of this chapter, all such bonds, interim receipts, or other obligations shall be deemed to be negotiable instruments under the laws of the Commonwealth. The provisions of this chapter, and of any resolution or indenture providing for the issuance and security of any revenue bonds, interim receipts, or other obligations issued pursuant to this chapter, shall constitute a contract with the holder of such revenue bonds, interim receipts, or other obligations, and the agreements and covenants of the Authority under this chapter and under such resolution, resolutions, or indentures shall be enforceable by any holder of revenue bonds, interim receipts, or other obligations issued under the provisions of this chapter and any representative of such holder, and any trustee appointed under the bond resolution and authorized to do so, may by suit, action, injunction, mandamus, or other proceeding issued by a court of competent jurisdiction enforce all rights of such holders under the laws of the Commonwealth or granted by this chapter and in any such bond resolution or indenture and may compel performance of all duties required to be performed by this chapter and by such bond resolutions or indenture by the Authority or by any officer or agent thereof, including the fixing, charging, and collecting of fees, tolls, rents, rates, and other charges for the use of the Authority facilities.

§ 33.2-2911. Exemption from taxation.

All property, real and personal, and all rights and interests therein and the income of the Authority, the revenue bonds and the interest thereon, and the transfer thereof and any profit made on the sale thereof, shall at all times be free from taxation or assessment by the Commonwealth and by any municipality, county, or other political subdivision thereof.

§ 33.2-2912. General powers of City of Richmond and Counties of Henrico and Chesterfield.

The City of Richmond and the Counties of Henrico and Chesterfield may enter into and perform contracts or agreements with the Authority providing for furnishing to the Authority one or more of the following cooperative undertakings or any combination thereof:

1. The preparation, acquisition, loan, or exchange of survey, engineering, borings, construction and other technical reports, studies, plans, and data;

2. The providing of engineering, planning and other professional and technical services, labor, or other things of value;

3. The construction, in whole or in part, of public highways, bridges, tunnels, viaducts, interchanges, connecting highways, grade crossings, and other highway facilities;

4. The providing of funds in lump sums or installments to assist in paying the cost of any Authority facility or any Authority undertaking authorized by this chapter or the operation and maintenance thereof;

5. The acquisition and transfer to the Authority of land, including easements, rights-of-way, or other property, useful in the construction, operation, or maintenance of any Authority facility;

6. The making of payments or contributions to the Authority for the use of or in compensation for the services rendered by any Authority facility in lieu of the payment of tolls or other charges therefor, and such payments and contributions shall be deemed revenues of the project to the same extent as the tolls, rentals, fees, and other charges collected in the operation of the project;

7. When requested by the Authority, the vacating or changing of the location of any public highway or other public way or place or any portion thereof, public utility, sewer, pipe, main, conduit, cable, wire, tower, pole, or other equipment or appliance owned or controlled by or under the jurisdiction of either the City of Richmond or the County of Henrico or Chesterfield, in the manner required or authorized by law conferring such power on the City of Richmond or the County of Henrico or Chesterfield, and to construct the same in such new location as shall be designated by the governing body of the City of Richmond or the County of Henrico or Chesterfield, and the cost of vacating or changing the location or reconstruction thereof and any damages resulting therefrom required to be paid by the City of Richmond or County of Henrico or Chesterfield shall be reimbursed by the Authority as a part of the cost of the project in connection with which such expenditures have been made; and

8. The connection of any project of the Authority with the streets, highways, roads, and other public ways in the City of Richmond and in the Counties of Henrico and Chesterfield.

§ 33.2-2913. Powers of City of Richmond and Counties of Henrico and Chesterfield with respect to revenue bonds issued by the Authority.

A. The City of Richmond and the Counties of Henrico and Chesterfield each may enter into and perform contracts and agreements with the Authority to aid the Authority to pay the principal of and interest on revenue bonds or revenue refunding bonds issued by the Authority if, when, and as the revenues of the Authority may not be sufficient to pay such principal or interest when due. No such contract or agreement shall be deemed to be lending or granting credit to or in aid of any person, association, company, or corporation within the meaning of Section 10 of Article X of the Constitution of Virginia, nor shall any such contract or agreement be deemed to be a pledge of the full faith and credit or of the taxing power of the City of Richmond, the County of Henrico, or the County of Chesterfield for the payment of such principal or interest except as may be otherwise provided in such contracts or agreements. Any holder of bonds, notes, certificates, or other evidences of borrowing issued by the Authority under the provisions of this chapter or of coupons appertaining thereto, and the representatives of such holders and the trustee under any bond resolution or indenture, may either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce all rights of the Authority under or by virtue of any such contract or agreement.

B. Funds to perform any such contract or agreement may be provided by the City of Richmond, the County of Henrico, or the County of Chesterfield by appropriations of general or specific tax revenue, or by appropriations of accumulated funds allocated for public improvements generally, or allocated to the purposes of such contract or agreement, or by appropriations of the proceeds from the sale of bonds, which may be issued as provided in this chapter.

C. The City of Richmond, the County of Henrico, or the County of Chesterfield may issue bonds for the purpose of providing funds to perform any contract or agreement entered into with the Authority pursuant to the provisions of this chapter. Such bonds shall mature at such time not exceeding 40 years from their date, as may be determined by the governing body of the City of Richmond, the County of Henrico, or the County of Chesterfield issuing such bonds, and may be redeemable before maturity, at the option of the governing body of the City of Richmond, the County of Henrico, or the County of Chesterfield, at such price and under such terms and conditions as may be prescribed by such governing body prior to the issuance of the bonds. The City of Richmond, the County of Henrico, and the County of Chesterfield may provide for the issuance of refunding bonds for the purpose of refunding any outstanding bond that has been issued pursuant to the provisions of this subsection, including the payment of any redemption premium thereon, and any interest accrued or to accrue to the date of redemption of such bonds.

D. The authority of the City of Richmond, the County of Henrico, and the County of Chesterfield to contract and to issue bonds pursuant to this chapter is in addition to any existing authority to contract and issue bonds, anything in the laws of the Commonwealth, including the Charter of the City of Richmond, to the contrary notwithstanding, all of which laws and Charter are hereby amended or modified so as to effectuate the powers conferred by this chapter.

E. The governing bodies of the City of Richmond and of the Counties of Henrico and Chesterfield may exercise any of the powers granted by this chapter by resolution, and all proceedings of the City Council of the City of Richmond and the Boards of Supervisors of the Counties of Henrico and Chesterfield authorizing the

execution of such contracts and providing for the issuance of bonds pursuant to the provisions of this chapter shall not be subject to the provisions of the Charter of the City or this Code permitting a referendum on actions taken by the City Council and Boards of Supervisors except as required by the Constitution of Virginia, but all such proceedings shall take effect immediately upon the adoption thereof.

§ 33.2-2914. Powers of the Commonwealth Transportation Board.

The Commonwealth Transportation Board may:

1. Enter into and perform contracts or agreements with the Authority to furnish it with surveys, engineering, borings, plans, and specifications and other technical services, reports, studies, and data, the cost of which shall be reimbursed by the Authority as a part of the cost of the project in connection with which such contracts or agreements were entered into;

2. Allocate to and for the construction, operation, or maintenance of any highways constructed by the Authority and pay to the Authority such funds as may be or become available to the Commonwealth Transportation Board for such purposes;

3. Permit the connection of any highways constructed or acquired by the Authority with highways under the control and jurisdiction of the Commonwealth Transportation Board; and

4. Employ independent consulting engineers having a nationwide and favorable repute in estimating traffic over any such highways to determine whether the construction of such highways will result in substantial reduction in the volume of traffic over Interstate 95 and use funds under the control of the Commonwealth Transportation Board for that purpose.

§ 33.2-2915. Acquisition of property.

A. The Authority may acquire, solely from funds provided under the provisions of this chapter, such lands, structures, properties, rights, rights-of-way, franchises, easements, and other interests in lands, including lands lying under water and riparian rights, as it may deem necessary or convenient for the construction and operation of Authority facilities, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof.

B. The City of Richmond, the Counties of Henrico and Chesterfield, the Commonwealth Transportation Board, and, with the approval of the Governor, public agencies and commissions of the Commonwealth, notwithstanding any contrary provision of law, may lease, lend, grant, or convey to the Authority at its request upon such terms and conditions as the governing bodies of the City of Richmond, the Counties of Henrico and Chesterfield, the Commonwealth Transportation Board, or the proper authorities of such agencies or commissions of the Commonwealth may deem reasonable and fair and without the necessity of any advertisement, order of court, or other action or formality, other than the regular and formal action of the governing bodies or authorities concerned, any real property that may be necessary or convenient for the effectuation of the authorized purposes of the Authority, including public highways and any other real property already devoted to public use.

C. The City of Richmond and the Counties of Henrico and Chesterfield may, subject to the provisions of § 25.1-102, acquire by the exercise of the power of eminent domain granted to or conferred upon them, and in accordance with the procedure prescribed therefor, any real property that may be necessary or convenient for the effectuation of the authorized purposes of the Authority and lease, lend, grant, or convey such property to the Authority upon such terms and conditions as the governing bodies of the City of Richmond or Counties of Henrico and Chesterfield may deem reasonable and fair; the acquisition of such real property by the exercise of the power of eminent domain and the disposition of same to the Authority as provided in this section shall be and is declared to be for a public use of such property.

D. In any eminent domain proceedings by the Authority, the City of Richmond, or the County of Henrico or Chesterfield under this chapter, the court having jurisdiction of the suit, action, or proceeding may make such orders as may be just to the Authority, the City of Richmond, or the County of Henrico or Chesterfield and to the owners of the property to be condemned, and may require an undertaking or other security to secure such owners against any loss or damage by reason of the failure of the Authority, the City of Richmond, or the County of Henrico or Chesterfield to accept and pay for the property, or by reason of the taking of property occupied by such owners, but neither such undertaking or security nor any act or obligation of the

Authority, the City of Richmond, or the County of Henrico or Chesterfield shall impose any liability upon the Commonwealth.

E. If the owner, lessee, or occupier of any property to be condemned or otherwise acquired pursuant to this chapter refuses to remove his property therefrom or give up possession thereof, the Authority, the City of Richmond, or the County of Henrico or Chesterfield may proceed to obtain possession in any manner provided by law.

F. When the Authority, the City of Richmond, or the County of Henrico or Chesterfield proposes to construct a highway across the tracks of any railroad, the exercise of the general power of eminent domain over the property of a railroad granted by § 33.2-2902 shall be limited with respect to the property, right-of-way, facilities, works, or appurtenances upon which the tracks at such proposed crossing are located, to the acquisition only of an easement therein, which crossing shall be constructed either sufficiently above or below the grade of any such railroad track so that neither the crossing then under construction nor any part thereof, including any bridge abutments, columns, supporting structures, and appurtenances, nor any traffic upon it shall interfere in any manner with the use, operation, or maintenance of the trains, tracks, works, or appurtenances of the railroad or interfere with or endanger the movement of the trains or traffic upon the tracks of the railroad. Prior to the exercise of the power of eminent domain for such an easement, plans and specifications of that portion of the project to be constructed across the railroad tracks showing compliance with such requirements and showing sufficient and safe plans and specifications for such overhead or underground structure and appurtenances shall be submitted to the railroad for examination and approval. If the railroad fails or refuses within 30 days to approve the plans and specifications so submitted, the matter shall be submitted by the Authority, the City of Richmond, or the County of Henrico or Chesterfield to the State Corporation Commission, whose decision, arrived at after due consideration in accordance with its usual procedure, shall be final as to the sufficiency and safety of such plans and specifications and as to such elevations or distances above or below such tracks. The overhead or underground structures and appurtenances shall be constructed in accordance with such plans and specifications and in accordance with such elevations or distances above or below such tracks so approved by the railroad or the State Corporation Commission. A copy of the plans and specifications approved by the railroad or the State Corporation Commission shall be filed as an exhibit upon the institution of any proceeding brought in the exercise of the power of eminent domain.

G. The Commonwealth hereby consents, subject to the approval of the Governor, to the use by the Authority of any other lands or property owned by the Commonwealth, including lands lying under water, that are deemed by the Authority to be necessary for the construction or operation of any project being constructed by the Authority.

§ 33.2-2916. Transfer to City of Richmond.

A. If the City of Richmond has rendered financial assistance or contributed in any manner to the cost of construction of a limited access highway by the Authority within or partly within and partly without the corporate limits of the City of Richmond, and the Authority has issued bonds for the construction of such limited access highway, then, when all such bonds, including refunding bonds, and the interest thereon have been paid or a sufficient amount of cash or United States government securities have been deposited and dedicated to the payment of all such bonds and the interest to the maturity or redemption date thereof in trust for the benefit of the holders of such bonds, all property, real and personal, acquired in connection with such limited access highway within the City of Richmond shall be transferred by the Authority to the City as compensation to the City for the financial assistance rendered by the City to the Authority in connection with the construction or acquisition of such limited access highway, and such highway shall upon the acceptance thereof by the City become a part of the street or highway system of the City and shall thereafter be maintained and operated as a limited access highway by the City. The governing body of the City of Richmond shall have the power to fix, revise, charge, and collect tolls for transit over such limited access highway and as compensation for other uses that may be made thereof. The proceeds from such tolls and compensation shall be first used to reimburse the City of Richmond and the Counties of Henrico and Chesterfield for any funds or expenditures made by each of them pursuant to contracts or agreements authorized by § 33.2-2913 for which reimbursement has not been made, and then for the operation, maintenance, improvement, expansion, or

extension of such limited access highway and to increase its utility and benefits and for the construction, reconstruction, maintenance, and operation of other projects or highways connected with such limited access highway or with the federal or state highway systems, and for such purpose the City of Richmond shall succeed to all the functions and shall have all the powers conferred on the Authority by this chapter.

B. If the Authority constructs a limited access highway project partly within and partly without the corporate limits of the City of Richmond, any extension thereof shall be constructed or acquired only when approved by the unanimous vote of all members of the board of directors or by a vote of three-fourths of the directors and approval by the City Council of the City of Richmond and the Boards of Supervisors of the Counties of Henrico and Chesterfield. If the Authority has issued bonds for the purpose of constructing such project or for the purpose of constructing or acquiring such extensions when all such bonds, including any refunding bonds, and the interest thereon have been paid or a sufficient amount of cash or United States government securities have been deposited and dedicated to the payment thereof in trust for the benefit of holders of such bonds, all property, real and personal, acquired in connection with such project or extension thereof not required to be transferred to the City of Richmond pursuant to subsection A shall be transferred by the Authority to the political subdivisions in which such property is located at the time of such transfer at no cost to such political subdivisions in the event the subdivisions adopt a resolution accepting such property. If not accepted by such subdivisions within 30 days from the offer of the property by the Authority, then the Authority shall transfer such property to the Commonwealth Transportation Board. If such property is accepted by the political subdivision where the property is located, the governing body of such subdivision shall have the power to fix, revise, charge, and collect tolls for transit over such limited access highway project or extension and as compensation for other uses that may be made thereof. The proceeds from such tolls and compensation shall be used first to reimburse the City of Richmond and the Counties of Henrico and Chesterfield for any funds or expenditures made by each of them pursuant to contracts or agreements authorized by § 33.2-2913 for which reimbursement has not been made and then for the operation, maintenance, improvement, expansion, or extension of such limited access highway project and to increase its utility and benefits and for the construction, reconstruction, maintenance, and operation of other projects or highways connected with such limited access highway or with the state or federal highway systems and for such purpose such political subdivisions shall succeed to all the functions and shall have all the powers conferred on the Authority by this chapter with respect to such property.

§ 33.2-2917. Miscellaneous.

A. Any money set aside for the payment of the principal of or interest on any bonds issued by the Authority not claimed within two years from the day the principal of such bonds is due by maturity or by call for redemption shall be paid into the state treasury. No interest shall accrue on such principal or interest from the day the same is due. The Comptroller shall keep an account of all money thus paid into the state treasury, and it shall be paid to the individual partnership, association, or corporation entitled thereto upon satisfactory proof that such individual, partnership, association, or corporation is so entitled to such money. If the claim so presented is rejected by the Comptroller, the claimant may proceed against the Comptroller for recovery in the Circuit Court of the City of Richmond. An appeal from the judgment of the circuit court shall lie to the Supreme Court of Virginia as in actions at law, and all laws and rules relating to practice and procedure in actions at law shall apply to such authorized proceedings. No such proceedings shall be filed after 10 years from the day the principal of or interest on such bonds is due; however, if the individual having such claim is an infant or insane person or is imprisoned at such due date, such proceedings may be filed within five years after the removal of such disability, notwithstanding the fact that such 10-year period has expired.

B. The Authority may contract with the City of Richmond, the Counties of Henrico and Chesterfield, and the Department of State Police for the policing of any Authority facilities, and the City of Richmond, the Counties of Henrico and Chesterfield, and the Department of State Police are hereby authorized to enter into contracts with the Authority for such purpose. Police officers providing police services pursuant to such contracts shall be under the exclusive control and direction of the authority providing such officers and shall be responsible to that authority exclusively for the performance of their duties and the exercise of their powers. The Authority shall reimburse the City of Richmond, the County of Henrico or Chesterfield, or the Commonwealth in such amounts and at such time as shall be mutually agreed upon for providing police

service. Such officers shall be responsible for the preservation of the public peace, prevention of crime, apprehension of criminals, protection of the rights of persons and property, and enforcement of the laws of the Commonwealth and all regulations of the Authority made in accordance, and such officers shall have all the rights and duties of police officers as provided by the general laws of the Commonwealth. The violation of any such regulation shall be punishable as follows: if such a violation would have been a violation of law if committed on any public highway in the City of Richmond or the County of Henrico or Chesterfield, it shall be punishable in the same manner as if it had been committed on such public highway; otherwise it shall be punishable as a Class 1 misdemeanor. All other police officers of the Commonwealth, the City of Richmond, and the Counties of Henrico and Chesterfield shall have the same powers and jurisdiction within the areas of operations agreed upon by the parties that they have beyond such limits and shall have access to all such areas at any time without interference for the purpose of exercising such powers and jurisdiction. For the purpose of enforcing such laws and regulations, the court having jurisdiction for the trial of criminal offenses committed in the City of Richmond or in the Counties of Henrico and Chesterfield within whose boundaries any crime is committed shall have jurisdiction to try any person charged with the violation of any such laws and regulations within such boundaries. A copy of the regulations of the Authority, attested by the secretary or secretary-treasurer of the Authority, may be admitted as evidence in lieu of the original. Any such copy purporting to be sealed and signed by such secretary or secretary-treasurer may be admitted as evidence without any proof of the seal or signature or of the official character of the person whose name is signed to it.

C. All actions at law and suits in equity and other proceedings, actions, and suits against the Authority, or any other person, firm, or corporation, growing out of the construction, maintenance, repair, operation, and use of any Authority facility, or growing out of any other circumstances, events, or causes in connection therewith, unless otherwise provided in this section, shall be brought and conducted in the court having jurisdiction of such actions, suits, and proceedings in the City of Richmond or the County of Henrico or Chesterfield within whose boundaries the causes of such actions, suits, and proceedings arise, and jurisdiction is hereby conferred on such court for that purpose. All such actions, suits, and proceedings on behalf of the Authority shall be brought and conducted in the Circuit Court of the City of Richmond, except as otherwise provided in this section, and exclusive jurisdiction is hereby conferred on such court for the purpose. Eminent domain proceedings instituted and conducted by the Authority shall be brought and conducted in the court having jurisdiction of such proceedings in the City of Richmond or the County of Henrico or Chesterfield within whose boundaries the land or other property to be so acquired or the major portion thereof is situated, and jurisdiction is hereby conferred on such court for such purpose.

D. On or before September 30 of each year, the Authority shall prepare a report of its activities for the 12-month period ending the preceding July 1 of such year and shall file a copy thereof with the Commonwealth Transportation Board, the City of Richmond, and the Counties of Henrico and Chesterfield. Each such report shall set forth an operating and financial statement covering the Authority's operations during the 12-month period covered by the report. The Authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants to be selected by the Authority, and the cost of such audit shall be treated as a part of the cost of construction and operation of a project.

E. The records, books, and accounts of the Authority shall be subject to examination and inspection by duly authorized representatives of the Commonwealth Transportation Board, the governing bodies of the City of Richmond and the Counties of Henrico and Chesterfield, and any bondholder at any reasonable time, provided the business of the Authority is not unduly interrupted or interfered with thereby.

F. Any member, agent, or employee of the Authority who contracts with the Authority or is interested in contracting with the Authority or in the sale of any property, either real or personal, to the Authority shall be guilty of a misdemeanor and shall be subject to a fine of not more than $1,000 or imprisonment in jail for not more than one year, either or both. Exclusive jurisdiction for the trial of such misdemeanors is hereby conferred upon the Circuit Court of the City of Richmond, provided that the term "contract," as used in this chapter, shall not be held to include the depositing of funds in, the borrowing of funds from, or the serving as agent or trustee by any bank in which any member, agent, or employee of the Authority may be a director, officer, or employee or have a security interest, nor shall such term include contracts or agreements with the

Commonwealth Transportation Board or the purchase of services from, or other transactions in the ordinary course of business with, public service corporations.

§ 33.2-2918. Approval by Commonwealth Transportation Board.

The Authority shall not construct a limited access toll highway without the approval of the Commonwealth Transportation Board.

§ 33.2-2919. Liberal construction.

This chapter shall be liberally construed to effectuate the purposes hereof, and the foregoing sections of this chapter shall be deemed to provide an additional and alternative method of doing the things authorized thereby, and shall be regarded as supplemental and additional to powers conferred upon the City of Richmond by its Charter and upon the City of Richmond and Counties of Henrico and Chesterfield by other provisions of law; however, the issuance of revenue bonds or revenue refunding bonds under the provisions of this chapter need not comply with the requirements of any other law applicable to the issuance of bonds, and except as provided in this chapter none of the powers granted to the Authority under the provisions of this chapter shall be subject to the supervision or regulation or require the approval or consent of the City of Richmond or the Counties of Henrico or Chesterfield or any commission, board, bureau, official, or agency thereof or of the Commonwealth, except as otherwise provided in this chapter.

§ 33.2-2920. Severability.

The provisions of this chapter are severable, and if any of its provisions is held unconstitutional by a court of competent jurisdiction, the decision of such court shall not affect or impair any of the other provisions of this chapter.

§ 33.2-2921. Inconsistent laws inapplicable.

All other laws, including the provisions of the Charter of the City of Richmond, inconsistent with any provision of this chapter are hereby declared to be inapplicable to the provisions of this chapter and to any project constructed by the Authority pursuant to this chapter.

CHAPTER 30.

WASHINGTON METROPOLITAN AREA TRANSIT REGULATION COMPACT OF 1958.

§ 33.2-3000. Washington Metropolitan Area Transit Regulation Compact of 1958.

§ 1. The Governor is hereby authorized and directed to execute, on behalf of the Commonwealth of Virginia, a compact with the District of Columbia and the State of Maryland, which compact shall be in form substantially as follows: (1958, c. 627)

§ 2. (1958, c. 627; repealed 1988, c. 890)

§ 2.1. Washington Metropolitan Area Transit Regulation Compact.--Whereas, the Commonwealth of Virginia (Chapter 627, 1958 Acts of Assembly), the State of Maryland (Chapter 613, Acts of General Assembly, 1959), and the Commissioners of the District of Columbia (resolution of the Board of Commissioners, December 22, 1960) entered into and executed the Washington Metropolitan Area Transit Regulation Compact on December 22, 1960; and

Whereas, the Congress of the United States has, by joint resolution approved October 9, 1962 (Public Law 87-767, 76 Stat. 764), given its consent to the State of Maryland, and the Commonwealth of Virginia to effectuate certain clarifying amendments to the Compact, and has authorized and directed the Commissioners of the District of Columbia to effectuate the amendments on behalf of the United States for the District of Columbia; and

Whereas, the Commonwealth of Virginia (Chapter 67, 1962 Acts of Assembly), the State of Maryland (Chapter 114, Acts of General Assembly, 1962), and the Commissioners of the District of Columbia (resolution of the Board of Commissioners adopted on March 19, 1963) have adopted those clarifying amendments to the Compact;

Now, therefore, the State of Maryland, the Commonwealth of Virginia and the District of Columbia, hereafter referred to as the signatories, covenant and agree as follows:

TITLE I.

GENERAL COMPACT PROVISIONS.

Article I.

There is created the Washington Metropolitan Area Transit District, referred to as the Metropolitan District, which shall include: the District of Columbia; the cities of Alexandria and Falls Church of the Commonwealth of Virginia; Arlington County and Fairfax County of the Commonwealth of Virginia, the political subdivisions located within those counties, and that portion of Loudoun County, Virginia, occupied by the Washington Dulles International Airport; Montgomery County and Prince George's County of the State of Maryland, and the political subdivisions located within those counties; and all other cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of those counties, cities, and airports.

Article II.

1. The signatories hereby create the "Washington Metropolitan Area Transit Commission," hereafter called the "Commission," which shall be an instrumentality of the District of Columbia, the Commonwealth of Virginia, and the State of Maryland, and shall have the powers and duties set forth in the Compact and those additional powers and additional powers and duties conferred upon it by subsequent action of the signatories.

2. The Commission shall have jurisdiction coextensive with the Metropolitan District for the regulation of passenger transportation within the Metropolitan District on a coordinated basis, without regard to political boundaries within the Metropolitan District, as set forth in this Compact.

Article III.

1. (A) The Commission shall be composed of three members, one member appointed by the Governor of Virginia from the Department of Motor Vehicles of the Commonwealth of Virginia, one member appointed by the Governor of Maryland from the Maryland Public Service Commission, and one member appointed by the Mayor of the District of Columbia from a District of Columbia agency with oversight of matters relating to the Commission.

(B) A member appointed shall serve for a term coincident with the term of that member on the agency of the signatory, and a member may be removed or suspended from office as the law of the appointing signatory provides.

(C) Vacancies shall be filled for an unexpired term in the same manner as an original appointment.

(D) An amendment to Section 1 (A) of this Article shall not affect any member in office on the amendment's effective date.

2. A person in the employment of or holding an official relation to a person or company subject to the jurisdiction of the Commission or having an interest of any nature in a person or company or affiliate or associate thereof, may not hold the office of commissioner or serve as an employee of the Commission or have any power or duty or receive any compensation in relation to the Commission.

3. (A) The Commission shall select a chairman from among its members.

(B) The chairman shall be responsible for the Commission's work and shall have all powers to discharge that duty.

4. A signatory may pay the Commissioner from its jurisdiction the salary or expenses, if any, that it considers appropriate.

5. (A) The Commission may employ engineering, technical, legal, clerical, and other personnel on a regular, part-time, or consulting basis to assist in the discharge of its functions.

(B) The Commission is not bound by any statute or regulation of a signatory in the employment or discharge of an officer or employee of the Commission, except that contained in this Compact.

6. The Commission shall establish its office at a location to be determined by the Commission within the Metropolitan District and shall publish rules and regulations governing the conduct of its operations.

Article IV.

1. (A) The signatories shall bear the expenses of the Commission in the manner set forth here.

(B) The Commission shall submit to the Governor of Virginia, the Governor of Maryland, and the Mayor of the District of Columbia, when requested, a budget of its requirements for the period required by the laws of the signatories for presentation to the legislature.

(C) The Commission shall allocate its expenses among the signatories in the proportion that the population of each signatory within the Metropolitan District bears to the total population of the Metropolitan District.

(D) (I) The Commission shall base its allocation on the latest available population statistics of the Bureau of the Census; or

(II) If current population data are not available, the Commission may, upon the request of a signatory, employ estimates of population prepared in a manner approved by the Commission and by the signatory making the request.

(E) The Governors of the two states and the Mayor of the District of Columbia shall approve the allocation made by the Commission.

2. (A) The signatories shall appropriate their proportion of the budget for the expenses of the Commission and shall pay that appropriation to the Commission.

(B) The budget of the Commission and the appropriations of the signatories may not include a sum for the payment of salaries or expenses of the Commissioners.

(C) The provisions of § 2.1-30 of the Code of Virginia do not apply to any official or employee of the Commonwealth of Virginia acting or performing services under this Act.

3. (A) If the Commission requests and a signatory makes available personnel, services, or material which the Commission would otherwise have to employ or purchase, the Commission shall:

(I) determine an amount; and

(II) reduce the expenses allocable to a signatory.

(B) If any services in kind are rendered, the Commission shall return to the signatory an amount equivalent to the savings to the Commission represented by the contribution in kind.

4. (A) The Commission shall have the power to establish fees under regulations, including but not limited to filing fees and annual fees.

(B) The Commission shall return to the signatories fees established by it in proportion to the share of the Commission's expenses home by each signatory in the fiscal year during which the fees were collected.

5. (A) The Commission shall keep accurate books of account, showing in full its receipts and disbursements.

(B) The books of account shall be open for inspection by representatives of the respective signatories at any reasonable time.)

Article V.

1. An action by the Commission may not be effective unless a majority of the members concur.

2. An order entered by the Commission under the provisions of Title II of this Act which affect operations or matters solely intrastate or solely within the District of Columbia may not be effective unless the Commissioner from the affected signatory concurs.

3. Two members of the Commission are a quorum.

4. The Commission may delegate by regulation the tasks that it considers appropriate.

Article VI.

This Compact does not amend, alter, or affect the power of the signatories and their political subdivisions to levy and collect taxes on the property or income of any person or company subject to this Act or upon any material, equipment, or supplies purchased by that person or company or to levy, assess, and collect franchise or other similar taxes, or fees for the licensing of vehicles and their operation.

Article VII.

This amended Compact shall become effective ninety days after the signatories adopt it.

Article VIII.

1. (A) This Compact may be amended from time to time without the prior consent or approval of the Congress of the United States and any amendment shall be effective unless, within one year, the Congress disapproves that amendment.

(B) An amendment may not be effective unless adopted by each of the signatories.

2. (A) A signatory may withdraw from the Compact upon written notice to the other signatories.

(B) In the event of a withdrawal, the Compact shall be terminated at the end of the Commission's next full fiscal year following the notice.

3. Upon the termination of this Compact, the jurisdiction over the matters and persons covered by this Act shall revert to the signatories and the federal government, as their interests may appear, and the applicable laws of the signatories and the federal government shall be reactivated without further legislation.

Article IX.

Each of the signatories pledges to each of the other signatories faithful cooperation in the regulation of passenger transportation within the Metropolitan District and agrees to enact any necessary legislation to achieve the objectives of the Compact for the mutual benefit of the citizens living in the Metropolitan District.

Article X.

1. If a provision of this Act or its application to any person or circumstance is held invalid in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

2. In accordance with the ordinary rules for construction of interstate compacts, this Act shall be liberally construed to effectuate its purposes.

TITLE II.

COMPACT REGULATORY PROVISIONS.

Article XI.

1. This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District, including but not limited to:

(A) As to interstate and foreign commerce, transportation performed over a regular route between a point in the Metropolitan District and a point outside the Metropolitan District if:

(I) The majority of passengers transported over that regular route are transported between points within the Metropolitan District; and

(II) That regular route is authorized by a certificate of public convenience and necessity issued by the Interstate Commerce Commission; and

(B) The rates, charges, regulations, and minimum insurance requirements for taxicabs and other vehicles that perform a bona fide taxicab service, where the taxicab or other vehicle:

(I) has a seating capacity of nine persons or less, including the driver; and

(II) provides transportation from one signatory to another within the Metropolitan District.

2. Solely for the purposes of this section and Section 18 of this Article:

(A) The Metropolitan District shall include that portion of Anne Arundel County, Maryland, occupied by the Baltimore-Washington International Airport; and

(B) Jurisdiction of the Commission shall apply to taxicab rates, charges, regulations, and minimum insurance requirements for interstate transportation between the Baltimore-Washington International Airport and other points in the Metropolitan District, unless conducted by a taxicab licensed by the state of Maryland or a political subdivision of the state of Maryland, or operated under a contract with the state of Maryland.

3. Excluded from the application of this Act are:

(A) Transportation by water, air, or rail;

(B) Transportation performed by the federal government, the signatories to this Compact, or any political subdivision of the signatories;

(C) Transportation performed by the Washington Metropolitan Area Transit Authority;

(D) Transportation by a motor vehicle employed solely in transporting teachers and school children through grade 12 to or from public or private schools;

(E) Transportation performed over a regular route between a point in the Metropolitan District and a point outside the Metropolitan District, including transportation between those points on the regular route that are within the Metropolitan District, if:

(I) the majority of passengers transported over the regular route are not transported between points in the Metropolitan District; and

(II) the regular route is authorized by a certificate of public convenience and necessity issued by the Interstate Commerce Commission;

(F) Matters other than rates, charges, regulations, and minimum insurance requirements relating to vehicles and operations described in sections 1(B) and 2 of this article;

(G) Transportation solely within the Commonwealth of Virginia and the activities of persons performing that transportation; and

(H) The exercise of any power or the discharge of any duty conferred or imposed upon the State Corporation Commission of the Commonwealth of Virginia by the Virginia Constitution.

Definitions.

4. In this Act the following words have the meanings indicated.

(A) "Carrier" means a person who engages in the transportation of passengers by motor vehicle or other form or means of conveyance for hire.

(B) "Motor vehicle" means an automobile, bus, or other vehicle propelled or drawn by mechanical or electrical power on the public streets or highways of the Metropolitan District and used for the transportation of passengers.

(C) "Person" means an individual, firm, copartnership, corporation, company, association or joint stock association, and includes a trustee, receiver, assignee, or personal representative of them.

(D) "Taxicab" means a motor vehicle for hire (other than a vehicle operated under a certificate of Authority issued by the Commission) having a seating capacity of nine persons or less, including the driver, used to accept or solicit passengers along the public streets for transportation.

General Duties of Carriers.

5. Each authorized carrier shall:

(A) Provide safe and adequate transportation service, equipment, and facilities; and

(B) Observe and enforce Commission regulations established under this Act.

Certificates of Authority.

6. (A) A person may not engage in transportation subject to this Act unless there is in force a "certificate of Authority" issued by the Commission authorizing the person to engage in that transportation.

(B) On the effective date of this Act a person engaged in transportation subject to this Act under an existing "certificate of Public Convenience and Necessity" or order issued by the Commission shall be issued a new "certificate of Authority" within 120 days after the effective date of this amendment.

(C) (I) Pending issuance of the new certificate of Authority, the continuance of operations shall be permitted under an existing certificate or order issued by the Commission which will continue in effect on the effective date of this Act.

(II) The operations described in paragraph (I) of this subsection shall be performed according to the rates, regulations, and practices of the certificate holder on file with the Commission on the effective date of this Act.

7. (A) When an application is made under this section for a certificate of Authority, the Commission shall issue a certificate to any qualified applicant, authorizing all or any part of the transportation covered by the application, if it finds that:

(I) The applicant is fit, willing, and able to perform that transportation properly, conform to the provisions of this Act, and conform to the rules, regulations and requirements of the Commission; and

(II) That the transportation is consistent with the public interest.

(B) If the Commission finds that the requirements of subsection (A) of this section have not been met, the application shall be denied by the Commission.

(C) The Commission shall act upon applications under this Act as soon as possible.

(D) The Commission may attach to the issuance of a certificate and to the exercise of the rights granted under it any term, condition, or limitation that is consistent with the public interest.

(E) A term, condition, or limitation imposed by the Commission may not restrict the right of a carrier to add to equipment and facilities over the routes or within the territory specified in the certificate, as business development and public demand may require.

(F) A person applying for or holding a certificate of Authority shall comply with Commission regulations regarding maintenance of a surety bond, insurance policy, self-insurance qualification, or other security or agreement in an amount that the Commission may require to pay any final judgment against a carrier for

bodily injury or death of a person, or for loss or damage to property of another, resulting from the operation, maintenance, or use of a motor vehicle or other equipment in performing transportation subject to this Act.

(G) A certificate of Authority is not valid unless the holder is in compliance with the insurance requirements of the Commission.

8. Application to the Commission for a certificate under this Act shall be:

(A) Made in writing;

(B) Verified; and

(C) In the form and with the information that the Commission regulations require.

9. (A) A certificate of Authority issued by the Commission shall specify the route over which a regularly scheduled commuter service or other regular-route service will operate.

(B) A certificate issued by the Commission authorizing irregular-route service shall be coextensive with the Metropolitan District.

(C) A carrier subject to this Act may not provide any passenger transportation for hire on an individual fare paying basis in competition with an existing, scheduled, regular-route, passenger transportation service performed by, or under a contract with, the federal government, a signatory to the Compact, a political subdivision of a signatory, or the Washington Metropolitan Area Transit Authority, notwithstanding any "Certificate of Authority."

(D) A certificate for the transportation of passengers may include authority to transport newspapers, passenger baggage, express, or mail in the same vehicle, or to transport passenger baggage in a separate vehicle.

10. (A) Certificates shall be effective from the date specified on them and shall remain in effect until amended, suspended, or terminated.

(B) Upon application by the holder of a certificate, the Commission may suspend, amend, or terminate the Certificate of Authority.

(C) Upon complaint or the Commission's own initiative, the Commission, after notice and hearing, may suspend or revoke all or part of any Certificate of Authority for willful failure to comply with:

(I) A provision of this Act;

(II) An order, rule, or regulation of the Commission; or

(III) A term, condition, or limitation of the certificate.

(D) The Commission may direct that a carrier cease an operation conducted under a certificate if the Commission finds the operation, after notice and hearing, to be inconsistent with the public interest.

11. (A) A person may not transfer a Certificate of Authority unless the Commission approves the transfer as consistent with the public interest.

(B) A person other than the person to whom an operating authority is issued by the Commission may not lease, rent, or otherwise use that operating authority.

12. (A) A carrier may not abandon any scheduled commuter service operated under a Certificate of Authority issued to the carrier under this Act, unless the Commission authorizes the carrier to do so by a Commission order.

(B) Upon application by a carrier, the Commission shall issue an order, after notice and hearing, if it finds that abandonment of the route is consistent with the public interest.

(C) The Commission, by regulation or otherwise, may authorize the temporary suspension of a route if it is consistent with the public interest.

(D) As long as the carrier has an opportunity to earn a reasonable return in all its operations, the fact that a carrier is operating a service at a loss will not, of itself, determine the question of whether abandonment of service is consistent with the public interest.

13. (A) When the Commission finds that there is an immediate need for service that is not available, the Commission may grant temporary authority for that service without a hearing or other proceeding up to a maximum of 180 consecutive days, unless suspended or revoked for good cause.

(B) A grant of temporary authority does not create any presumption that permanent authority will be granted at a later date.

Rates and Tariffs.

14. (A) Each carrier shall file with the Commission, publish, and keep available for public inspection tariffs showing:

(I) Fixed-rates and fixed-fares for transportation subject to this Act; and

(II) Practices and regulations, including those affecting rates and fares, required by the Commission.

(B) Each effective tariff shall:

(I) Remain in effect for at least 60 days from its effective date, unless the Commission orders otherwise; and

(II) Be published and kept available for public inspection in the form and manner prescribed by the Commission.

(C) A carrier may not charge a rate or fare for transportation subject to this Act other than the applicable rate or fare specified in a tariff filed by the carrier under this Act and in effect at the time.

15. (A) A carrier proposing to change a rate, fare, regulation, or practice specified in an effective tariff shall file a tariff showing the change in the form and manner, and with the information, justification, notice, and supporting material prescribed by the Commission.

(B) Each tariff filed under subsection (A) of this section shall state a date on which the tariff shall take effect, which shall be at least seven calendar days after the date on which the tariff is filed, unless the Commission orders an earlier effective date or rejects the tariff.

(C) (I) A tariff filed for approval with the Commission may be refused acceptance for filing if it is not consistent with this Act and Commission regulations; and

(II) A tariff refused for filing shall be void.

16. (A) The Commission may hold a hearing upon complaint or upon the Commission's own initiative after reasonable notice to determine whether a rate, fare, regulation, or practice relating to a tariff is unjust, unreasonable, unduly discriminatory, or unduly preferential between classes of riders or between locations within the Metropolitan District.

(B) Within 120 days of the hearing, the Commission shall pass an order prescribing the lawful rate, fare, regulation, or practice, or affirming the tariff.

Through Routes, Joint Fares.

17. With the approval of the Commission, any carrier subject to this Act may establish through routes and joint fares with any other lawfully authorized carrier.

Taxicab Fares.

18. (A) the Commission shall prescribe reasonable rates for transportation by taxicab, only when:

(I) The trip is between a point in the jurisdiction of one signatory and a point in the jurisdiction of another signatory; and

(II) Both points are within the Metropolitan District.

(B) The fare or charge for taxicab transportation may be calculated on a mileage basis, a zone basis, or on any other basis approved by the Commission.

(C) The Commission may not require the installation of a taximeter in any taxicab when a taximeter is not permitted or required by the jurisdiction licensing and otherwise regulating the operation and service of the taxicab.

(D) A person licensed by a signatory to own or operate a taxicab shall comply with Commission regulations regarding maintenance of a surety bond, insurance policy, self-insurance qualification, or other security or agreement in an amount that the Commission may require to pay a final judgment for bodily injury or death of a person, or for loss or damage to property of another, resulting from the operation, maintenance, or use of a taxicab in performing transportation subject to this Act.

Article XII.

Accounts, Records, and Reports.

1. (A) The Commission may prescribe that any carrier subject to this Act:

(I) Submit special reports and annual or other periodic reports;

(II) Make reports in a form and manner required by the Commission;

(III) Provide a detailed answer to any question about which the Commission requires information;

(IV) Submit reports and answers under oath; and

(V) Keep accounts, records, and memoranda of its activity, including movement of traffic and receipt and expenditure of money in a form and for a period required by the Commission.

(B) The Commission shall have access at all times to the accounts, records, memoranda, lands, buildings, and equipment of any carrier for inspection purposes.

(C) This section shall apply to any person controlling, controlled by, or under common control with a carrier subject to this Act, whether or not that person otherwise is subject to this Act.

(D) A carrier that has its principal office outside of the Metropolitan District J operates both inside and outside of the Metropolitan District may keep all accounts, records, and memoranda at its principal office, but the carrier shall produce those materials before the Commission when directed by the Commission.

(E) This section does not relieve a carrier from recordkeeping or reporting obligations imposed by a state or federal agency or regulatory commission for transportation service rendered outside the Metropolitan District.

Issuance of Securities.

2. This Act does not impair any authority of the federal government and the signatories to regulate the issuance of securities by a carrier.

Consolidations, Mergers, and Acquisition of Control.

3. (A) A carrier or any person controlling, controlled by, or under common control with a carrier shall obtain Commission approval to;

(I) Consolidate or merge any part of the ownership, management, or operation of its property or franchise with a carrier that operates in the Metropolitan District;

(II) Purchase, lease, or contract to operate a substantial part of the property or franchise of another carrier that operates in the Metropolitan District; or

(III) Acquire control of another carrier that operates in the Metropolitan District through ownership of its stock or other means.

(B) Application for Commission approval of a transaction under this section shall be made in the form and with the information that the regulations of the Commission require.

(C) If the Commission finds, after notice and hearing, that the proposed transaction is consistent with the public interest, the Commission shall pass an order authorizing the transaction.

(D) Pending determination of an application filed under this section, the Commission may grant "temporary approval" without a hearing or other proceeding up to a maximum of 180 consecutive days if the Commission determines that grant to be consistent with the public interest.

Article XIII.

Investigations by the Commission and Complaints.

1. (A) A person may file a written complaint with the Commission regarding anything done or omitted by a person in violation of a provision of this Act, or in violation of a requirement established under it.

(B) (I) It the respondent does not satisfy the complaint and the facts suggest that there are reasonable grounds for an investigation, the Commission shall investigate the matter.

(II) It the Commission determines that a complaint does not state facts which warrant action, the Commission may dismiss the complaint without hearing.

(III) The Commission shall notify a respondent that a complaint has been filed at least ten days before a hearing is set on the complaint.

(C) The Commission may investigate on its own motion a fact, condition, practice, or matter to;

(I) Determine whether a person has violated or will violate a provision of this Act or a rule, regulation, or order;

(II) Enforce the provisions of this Act or prescribe or enforce rules or regulations under it; or

(III) Obtain information to recommend further legislation.

(D) If, after hearing, the Commission finds that a respondent has violated a provision of this Act or any requirement established under it, the Commission shall;

(I) Issue an order to compel the respondent to comply with this Act; and

(II) Effect other just and reasonable relief.

(E) For the purpose of an investigation or other proceeding under this Act, the Commission may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, contracts, agreements, or other records or evidence which the Commission considers relevant to the inquiry.

Hearings; Rules of Procedure.

2. (A) Hearings under this Act shall be held before the Commission, and records shall be kept.

(B) Rules of practice and procedure adopted by the Commission shall govern all hearings, investigations, and proceedings under this Act, but the Commission may apply the technical rules of evidence when appropriate.

Administrative powers of Commission; Rules, Regulations, and Orders.

3. (A) The Commission shall perform any act, and prescribe, issue, make, amend, or rescind any order, rule, or regulation that it finds necessary to carry out the provisions of this Act.

(B) The rules and regulations of the Commission shall prescribe the form of any statement, declaration, application, or report filed with the Commission, the information it shall contain, and the time of filing.

(C) The rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe, unless a different date is specified.

(D) Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe.

(E) For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for them.

(F) Commission rules and regulations shall be available for public inspection during reasonable business hours.

Reconsideration of Orders.

4. (A) A party to a proceeding affected by a final order or decision of the Commission may file within thirty days of its publication a written application requesting Commission reconsideration of the matter involved, and stating specifically the errors claimed as grounds for the reconsideration.

(B) The Commission shall grant or deny the application within thirty days after it has been filed.

(C) If the Commission does not grant or deny the application by order within thirty days, the application shall be deemed denied.

(D) If the application is granted, the Commission shall rescind, modify, or affirm its order or decision with or without a hearing, after giving notice to all parties.

(E) Filing an application for reconsideration may not act as a stay upon the execution of a Commission order or decision, or any part of it unless the Commission orders otherwise.

(F) An appeal may not be taken from an order or decision of the Commission until an application for reconsideration has been filed and determined.

(G) Only an error specified as a ground for reconsideration may be used as a ground for judicial review.

Judicial Review.

5. (A) Any party to a proceeding under this Act may obtain a review of the Commission's order in the United States Court of Appeals for the Fourth Circuit, or in the United States Court of Appeals for the District of Columbia Circuit, by filing within sixty days after Commission determination of an application for reconsideration, a written petition praying that the order of the Commission be modified or set aside.

(B) A copy of the petition shall be delivered to the office of the Commission and the Commission shall certify and file with the court a transcript of the record upon which the Commission order was entered.

(C) The court shall have exclusive jurisdiction to affirm, modify, remand for reconsideration, or set aside the Commission's order.

(D) The court's judgment shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in Title 28 U.S.C. §§ 1254 and 2350.

(E) The commencement of proceedings under subsection (A) of this section may not operate as a stay of the Commission's order unless specifically ordered by the court.

(F) The Commission and its members, officers, agents, employees, or representatives are not liable to suit or action or for any judgment or decree for damages, loss, or injury resulting from action taken under the Act,

nor required in any case arising or any appeal taken under this Act to make a deposit, pay costs, or pay for service to the clerks of a court or to the marshal of the United States or give a supersedeas bond or security for damages.

Enforcement of Act; Penalty for Violations.

6. (A) Whenever the Commission determines that a person is engaged or will engage in an act or practice which violates a provision of this Act or a rule, regulation, or order under it, the Commission may bring an action in the United States District Court in the district in which the person resides or conducts business or in which the violation occurred to enjoin the act or practice and to enforce compliance with this Act or a rule, regulation, or order under it.

(B) If the court makes a determination under subsection (A) of this section, that a person has violated or will violate this Act or a rule, regulation, or order under the Act, the court shall grant a permanent or temporary injunction or decree or restraining order without bond.

(C) Upon application of the Commission, the United States District Court for the district in which the person resides or conducts business, or in which the violation occurred, shall have jurisdiction to issue an order directing that person to comply with the provisions of this Act or a rule, regulation, or order of the Commission under it, and to effect other just and reasonable relief.

(D) The Commission may employ attorneys necessary for:

(I) The conduct of its work;

(II) Representation of the public interest in Commission investigations, cases or proceedings on the Commission's own initiative or upon complaint; or

(III) Representation of the Commission in any court case.

(E) The expenses of employing an attorney shall be paid out of the funds of the Commission, unless otherwise directed by the court.

(F) (I) A person who knowingly and willfully violates a provision of this Act, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than $1,000 for the first violation and not more than $5,000 for any subsequent violation.

(II) Each day of the violation shall constitute a separate violation.

(III) Civil forfeitures shall be paid to the Commission with interest as assessed by the court.

(IV) The Commission shall pay to each signatory a share of the civil forfeitures and interest equal to the proportional share of the Commission's expenses borne by each signatory in the fiscal year during which the civil forfeiture is collected by the Commission.

Article XIV.

Expenses of Investigations and Other Proceedings.

1. (A) A carrier shall bear all expenses of an investigation or other proceeding conducted by the Commission concerning the carrier, and all litigation expenses, including appeals, arising from an investigation or other proceeding.

(B) When the Commission initiates an investigation or other proceeding, the Commission may require the carrier to pay to the Commission a sum estimated to cover the expenses that will be incurred under this section.

(C) Money paid by the carrier shall be deposited in the name and to the credit of the Commission, in any bank or other depository located in the Metropolitan District designated by the Commission, and the Commission may disburse that money to defray expenses of the investigation, proceeding, or litigation in question.

(D) The Commission shall return to the carrier any unexpended balance remaining after payment of expenses.

Applicability of Other Laws.

2. (A) The applicability of each law, rule, regulation, or order of a signatory relating to transportation subject to this Act shall be suspended on the effective date of this Act.

(B) The provisions of subsection (A) of this section do not apply to a law of a signatory relating to inspection of equipment and facilities.

(C) During the existence of the Compact, the jurisdiction of the Interstate Commerce Commission is suspended to the extent it is in conflict with the provisions of this Act.

Existing Rules, Regulations, Orders, and Decisions.

3. All Commission rules, regulations, orders, or decisions that are in force on the effective date of this Act shall remain in effect and be enforceable under this Act, unless otherwise provided by the Commission.

Pending Actions or Proceedings.

4. A suit, action, or other judicial proceeding commenced prior to the effective date of this Act by or against the Commission is not affected by the enactment of this Act and shall be prosecuted and determined under the law applicable at the time the proceeding was commenced.

Annual Report of the Commission.

5. The Commission shall make an annual report for each fiscal year ending June 30, to the Governor of Virginia and the Governor of Maryland, and to the Mayor of the District of Columbia as soon as practicable after June 30, but no later than the first day of January of each year, which may contain, in addition to a report of the work performed under this Act, other information and recommendations concerning passenger transportation within the Metropolitan District as the Commission considers advisable. (1988, c. 890; 2007, c. 378; 2009, c. 540)

CHAPTER 31.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY COMPACT OF 1966.

§ 33.2-3100. Washington Metropolitan Area Transit Authority Compact of 1966.

§ 3. Whereas, Maryland, Virginia and the District of Columbia heretofore have entered into the Washington Metropolitan Area Transit Regulation Compact (Virginia--Ch. 627, 1958 Acts of Assembly; Maryland--Ch. 613, Acts of General Assembly 1959; District of Columbia--Resolution of the Board of Commissioners adopted December 22, 1960), with the consent of the Congress (J.R., September 15, 1960, P.L., 86-794, 74 Stat. 1031, as amended by 76 Stat. 764), as a first step toward the improvement of transit service in the metropolitan area of Washington, D.C.;

Whereas, in said Compact each of the Signatories pledged to each of the other signatory parties faithful cooperation in the solution and control of transit and traffic problems within said metropolitan area and, in order to effect such purposes, agreed to enact any necessary legislation to achieve the objectives of the Compact to the mutual benefit of the citizens living within said metropolitan area and for the advancement of the interests of the Signatories;

Whereas, it has been established by a decade of studies that a regional system of improved and expanded transit facilities, including grade-separated rail facilities in congested areas, is essential in said metropolitan area for the satisfactory movement of people and goods, the alleviation of present and future traffic congestion, the economic welfare and vitality of all parts of the area, the effectiveness of the departments and agencies of the federal government located within the area, the orderly growth and development of the District of Columbia and the Maryland and Virginia portions of the area, the comfort and convenience of the residents of and visitors to the area, and the preservation of the beauty and dignity of the Nation's Capital;

Whereas, the Congress has authorized Maryland, Virginia and the District of Columbia to negotiate a Compact for the establishment of an organization empowered to provide necessary transit facilities (P.L. 86-669, 74 Stat. 537) and in said legislation declared the policy, inter alia, that the development and administration of such transit facilities requires (1) cooperation among the federal, state and local government of the area, (2) financial participation by the federal government in the creation of major facilities that are beyond the financial capacity or borrowing powers of the private carriers, the District of Columbia and the local governments of the area, and (3) coordination of transit facilities with other public facilities and with the use of land, public and private;

Whereas, private transit companies should be utilized to the extent practicable in providing the regional transit facilities and services, consistent with the requirements of the public interest that the publicly and privately owned facilities be operated as a coordinated regional system without unnecessary duplicating services;

Whereas, adequate provision should be made for the protection of transit labor in the development and operation of the regional system;

Whereas, adequate provisions should be made to eliminate any requirement of additional authentication of manual signature of bonds guaranteed by the United States of America; and

Whereas, it is hereby determined that an Authority to be created by interstate compact between the District of Columbia, the State of Maryland and the Commonwealth of Virginia, is the most suitable form of organization to achieve the stated objectives;

Now, therefore, the District of Columbia, the State of Maryland and the Commonwealth of Virginia, hereinafter referred to as Signatories, do hereby amend the Washington Metropolitan Area Transit Regulation Compact by adding thereto Title III, as hereinafter set forth, and do hereby covenant and agree substantially, as follows:

Title III

Article I

Definitions

Definitions

1. As used in this Title, the following words and terms shall have the following meanings, unless the context clearly requires a different meaning:

(a) "Board" means the Board of Directors of the Washington Metropolitan Area Transit Authority;

(b) "Director" means a member of the Board of Directors of the Washington Metropolitan Area Transit Authority;

(c) "Private transit companies" and "private carriers" means corporations, persons, firms or associations rendering transit service within the Zone pursuant to a certificate of public convenience and necessity issued by the Washington Metropolitan Area Transit Commission or by a franchise granted by the United States or any Signatory party to this Title;

(d) "Signatory" means the State of Maryland, the Commonwealth of Virginia and the District of Columbia;

(e) "State" includes District of Columbia;

(f) "Transit facilities" means all real and personal property located in the Zone, necessary or useful in rendering transit service between points within the Zone, by means of rail, bus, water or air and any other mode of travel, including, without limitation, tracks, rights-of-way, bridges, tunnels, subways, rolling stock for rail, motor vehicle, marine and air transportation, stations, terminals and ports, areas for parking and all equipment, fixtures, buildings and structures and services incidental to or required in connection with the performance of transit service;

(g) "Transit services" means the transportation of persons and their packages and baggage by means of transit facilities between points within the Zone including the transportation of newspapers, express and mail between such points, and charter service which originates within the Zone but does not include taxicab service or individual-ticket-sales sightseeing operations;

(h) "Transit Zone" or "Zone" means the Washington Metropolitan Area Transit Zone created and described in Section 3 as well as any additional area that may be added pursuant to Section 83(a) of this Compact; and

(i) "WMATC" means Washington Metropolitan Area Transit Commission.

Article II

Purpose and Functions

Purpose

2. The purpose of this Title is to create a regional instrumentality, as a common agency of each Signatory party, empowered, in the manner hereinafter set forth, (1) to plan, develop, finance and cause to be operated improved transit facilities, in coordination with transportation and general development planning for the Zone, as part of a balanced regional system of transportation, utilizing to their best advantage the various modes of transportation, (2) to coordinate the operation of the public and privately owned or controlled transit facilities, to the fullest extent practicable, into a unified regional transit system without unnecessary duplicating service, and (3) to serve such other regional purposes and to perform such other regional functions as the Signatories may authorize by appropriate legislation.

Article III

Organization and Area

Washington Metropolitan Area Transit Zone

3. There is hereby created the Washington Metropolitan Area Transit Zone which shall embrace the District of Columbia, the Cities of Alexandria, Falls Church and Fairfax and the Counties of Arlington, Fairfax and Loudoun and political subdivisions of the Commonwealth of Virginia located within those counties, and the counties of Montgomery and Prince George's in the State of Maryland and political subdivisions of the State of Maryland located in said counties.

Washington Metropolitan Area Transit Authority

4. There is hereby created, as an instrumentality and agency of each of the Signatory parties hereto, the Washington Metropolitan Area Transit Authority which shall be a body corporate and politic, and which shall have the powers and duties granted herein and such additional powers as may hereafter be conferred upon it pursuant to law.

Board Membership

5. (a) The Authority shall be governed by a Board of eight Directors consisting of two Directors for each Signatory and two for the federal government (one of whom shall be a regular passenger and customer of the bus or rail service of the Authority). For Virginia, the Directors shall be appointed by the Northern Virginia Transportation Commission; for the District of Columbia by the Council of the District of Columbia; for Maryland, by the Washington Suburban Transit Commission; and for the federal government, by the Administrator of General Services. For Virginia and Maryland, the Directors shall be appointed from among the members of the appointing body, except as otherwise provided herein, and shall serve for a term coincident with their term on the appointing body. A Director for a Signatory may be removed or suspended from office only as provided by the law of the Signatory from which he was appointed. The nonfederal appointing authorities shall also appoint an alternate for each Director. In addition, the Administrator of General Services shall also appoint two nonvoting members who shall serve as the alternates for the federal Directors. An alternate Director may act only in the absence of the Director for whom he has been appointed an alternate, except that, in the case of the District of Columbia where only one Director and his alternate are present, such alternate may act on behalf of the absent Director. Each alternate, including the federal nonvoting Directors, shall serve at the pleasure of the appointing authority. In the event of a vacancy in the office of Director or alternate, it shall be filled in the same manner as an original appointment.

(b) Before entering upon the duties of his office each Director and alternate director shall take and subscribe to the following oath (or affirmation) of office or any such other oath or affirmation, if any, as the Constitution or laws of the Government he represents shall provide:

"I,....., hereby solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and Laws of the state or political jurisdiction from which I was appointed as a Director (alternate director) of the Board of Washington Metropolitan Area Transit Authority and will faithfully discharge the duties of the office upon which I am about to enter."

Compensation of Directors and Alternates

6. Members of the Board and alternates shall serve without compensation but may be reimbursed for necessary expenses incurred as an incident to the performance of their duties.

Organization and Procedure

7. The Board shall provide for its own organization and procedure. It shall organize annually by the election of a Chairman and Vice-Chairman from among its members. Meetings of the Board shall be held as frequently as the Board deems that the proper performance of its duties requires and the Board shall keep minutes of its meetings. The Board shall adopt rules and regulations governing its meeting, minutes and transactions.

Quorum and Actions by the Board

8. (a) Four Directors or alternates consisting of at least one Director or alternate appointed from each Signatory, shall constitute a quorum and no action by the Board shall be effective unless a majority of the Board present and voting, which majority shall include at least one Director or alternate from each Signatory, concur therein; provided, however, that a plan of financing may be adopted or a mass transit plan adopted, altered, revised or amended by the unanimous vote of the Directors representing any two Signatories.

(b) The actions of the Board shall be expressed by motion or resolution. Actions dealing solely with internal management of the Authority shall become effective when directed by the Board, but no other action shall become effective prior to the expiration of thirty days following its adoption; provided, however, that the Board may provide for the acceleration of any action upon a finding that such acceleration is required for the proper and timely performance of its functions.

Officers

9. (a) The officers of the Authority, none of whom shall be members of the Board, shall consist of a general manager, a secretary, a treasurer, a comptroller, an inspector general, and a general counsel and such other officers as the Board may provide. Except for the office of general manager, inspector general, and comptroller, the Board may consolidate any of such other offices in one person. All such officers shall be appointed and may be removed by the Board, shall serve at the pleasure of the Board and shall perform such duties and functions as the Board shall specify. The Board shall fix and determine the compensation to be paid to all officers and, except for the general manager who shall be a full-time employee, all other officers may be hired on a full-time or part-time basis and may be compensated on a salary or fee basis, as the Board may determine. All employees and such officers as the Board may designate shall be appointed and removed by the general manager under such rules of procedure and standards as the Board may determine.

(b) The general manager shall be the chief administrative officer of the Authority and, subject to policy direction by the Board, shall be responsible for all activities of the Authority.

(c) The treasurer shall be the custodian of the funds of the Authority, shall keep an account of all receipts and disbursements and shall make payments only upon warrants duly and regularly signed by the Chairman or Vice-Chairman of the Board, or other person authorized by the Board to do so, and by the secretary or general manager; provided, however, that the Board may provide that warrants not exceeding such amounts or for such purposes as may from time to time be specified by the Board may be signed by the general manager or by persons designated by him.

(d) The inspector general shall report to the Board and head the Office of the Inspector General, an independent and objective unit of the Authority that conducts and supervises audits, program evaluations, and investigations relating to Authority activities; promotes economy, efficiency, and effectiveness in Authority activities; detects and prevents fraud and abuse in Authority activities; and keeps the Board fully and currently informed about deficiencies in Authority activities as well as the necessity for and progress of corrective action.

(e) An oath of office in the form set out in § 5 (b) of this Article shall be taken, subscribed and filed with the Board by all appointed officers.

(f) Each Director, officer and employee specified by the Board shall give such bond in such form and amount as the Board may require, the premium for which shall be paid by the Authority.

Conflict of Interest

10. (a) No Director, officer or employee shall:

(1) be financially interested, either directly or indirectly, in any contract, sale, purchase, lease or transfer of real or personal property to which the Board or the Authority is a party;

(2) in connection with services performed within the scope of his official duties, solicit or accept money or any other thing of value in addition to the compensation or expenses paid to him by the Authority;

(3a.) offer money or any thing of value for or in consideration of obtaining an appointment, promotion or privilege in his employment with the Authority.

(b) Any Director, officer or employee who shall willfully violate any provision of this section shall, in the discretion of the Board, forfeit his office or employment.

(c) Any contract or agreement made in contravention of this section may be declared void by the Board.

(d) Nothing in this section shall be construed to abrogate or limit the applicability of any federal or state law which may be violated by any action prescribed by this section.

Article IV

Pledge of Cooperation

11. Each Signatory pledges to each other faithful cooperation in the achievement of the purposes and objects of this Title.

Article V
General Powers

Enumeration

12. In addition to the powers and duties elsewhere described in this Title, and except as limited in this Title, the Authority may:

(a) Sue and be sued;

(b) Adopt and use a corporate seal and alter the same at pleasure;

(c) Adopt, amend, and repeal rules and regulations respecting the exercise of the powers conferred by this Title;

(d) Construct, acquire, own, operate, maintain, control, sell and convey real and personal property and any interest therein by contract, purchase, condemnation, lease, license, mortgage or otherwise but all of said property shall be located in the Zone and shall be necessary or useful in rendering transit service or in activities incidental thereto;

(e) Receive and accept such payments, appropriations, grants, gifts, loans, advances and other funds, properties and services as may be transferred or made available to it by any Signatory party, any political subdivision or agency thereof, by the United States, or by any agency thereof, or by any other public or private corporation or individual, and enter into agreements to make reimbursement for all or any part thereof;

(f) Enter into and perform contracts, leases and agreements with any person, firm or corporation or with any political subdivision or agency of any Signatory party or with the federal government, or any agency thereof, including, but not limited to, contracts or agreements to furnish transit facilities and service;

(g) Create and abolish offices, employments and positions (other than those specifically provided for herein) as it deems necessary for the purposes of the Authority, and fix and provide for the qualification, appointment, removal, term, tenure, compensation, pension and retirement rights of its officers and employees without regard to the laws of any of the Signatories;

(h) Establish, in its discretion, a personnel system based on merit and fitness and, subject to eligibility, participate in the pension and retirement plans of any Signatory, or political subdivision or agency thereof, upon terms and conditions mutually acceptable;

(i) Contract for or employ any professional services;

(j) Control and regulate the use of facilities owned or controlled by the Authority, the service to be rendered and the fares and charges to be made therefor;

(k) Hold public hearings and conduct investigations relating to any matter affecting transportation in the Zone with which the Authority is concerned and, in connection therewith, subpoena witnesses, papers, records and documents; or delegate such authority to any officer. Each Director may administer oaths or affirmations in any proceeding or investigation;

(l) Make or participate in studies of all phases and forms of transportation, including transportation vehicle research and development techniques and methods for determining traffic projections, demand motivations, and fiscal research and publicize and make available the results of such studies and other information relating to transportation;

(m) Exercise, subject to the limitations and restrictions herein imposed, all powers reasonably necessary or essential to the declared objects and purposes of this Title; and

(n) Establish regulations providing for public access to Board records.

Article VI
Planning

Mass Transit Plan

13. (a) The Board shall develop and adopt, and may from time to time review and revise, a mass transit plan for the immediate and long-range needs of the Zone. The mass transit plan shall include one or more plans designating (1) the transit facilities to be provided by the Authority, including the locations of terminals, stations, platforms, parking facilities and the character and nature thereof; (2) the design and location of such facilities; (3) whether such facilities are to be constructed or acquired by lease, purchase or condemnation; (4) a timetable for the provision of such facilities; (5) the anticipated capital cost; (6) estimated operating expenses and revenues relating thereto; and (7) the various other factors and considerations, which, in the

opinion of the Board, justify and require the projects therein proposed. Such plan shall specify the type of equipment to be utilized, the areas to be served, the routes and schedules of service expected to be provided and probable fares and charges therefor.

(b) In preparing the mass transit plan, and in any review or revision thereof, the Board shall make full utilization of all data, studies, reports and information available from the National Capital Transportation Agency and from any other agencies of the federal government, and from Signatories and the political subdivisions thereof.

Planning Process

14. (a) The mass transit plan, and any revisions, alterations or amendments thereof, shall be coordinated, through the procedures hereinafter set forth, with

(1) other plans and programs affecting transportation in the Zone in order to achieve a balanced system of transportation, utilizing each mode to its best advantage;

(2) the general plan or plans for the development of the Zone; and

(3) the development plans of the various political subdivisions embraced within the Zone.

(b) It shall be the duty and responsibility of each member of the Board to serve as liaison between the Board and the body which appointed him to the Board. To provide a framework for regional participation in the planning process, the Board shall create technical committees concerned with planning and collection and analyses of data relative to decision-making in the transportation planning process and the Mayor and Council of the District of Columbia, the component governments of the Northern Virginia Transportation District and the Washington Suburban Transit District shall appoint representatives to such technical committees and otherwise cooperate with the Board in the formulation of a mass transit plan, or in revisions, alterations or amendments thereof.

(c) The Board, in the preparation, revision, alteration or amendment of a mass transit plan, shall

(1) consider data with respect to current and prospective conditions in the Zone, including, without limitation, land use, population, economic factors affecting development plans, goals or objectives for the development of the Zone and the separate political subdivisions, transit demands to be generated by such development, travel patterns, existing and proposed transportation and transit facilities, impact of transit plans on the dislocation of families and businesses, preservation of the beauty and dignity of the Nation's Capital, factors affecting environmental amenities and aesthetics and financial resources;

(2) cooperate with and participate in any continuous, comprehensive transportation planning process cooperatively established by the highway agencies of the Signatories and the local political subdivisions in the Zone to meet the planning standards now or hereafter prescribed by the Federal-Aid Highway Acts; and

(3) to the extent not inconsistent with or duplicative of the planning process specified in subdivision (2) of this subsection (c), cooperate with the National Capital Planning Commission, the National Capital Regional Planning Council, the Washington Metropolitan Council of Governments, the Washington Metropolitan Area Transit Commission, the highway agencies of the Signatories, the Maryland-National Capital Park and Planning Commission, the Northern Virginia Regional Planning and Economic Development Commission, the Maryland State Planning Department and the Commission of Fine Arts. Such cooperation shall include the creation, as necessary, of technical committees composed of personnel, appointed by such agencies, concerned with planning and collection and analysis of data relative to decision-making in the transportation planning process.

Adoption of Mass Transit Plan

15. (a) Before a mass transit plan is adopted, altered, revised or amended, the Board shall transmit such proposed plan, alteration, revision or amendment for comment to the following and to such other agencies as the Board shall determine:

(1) the Mayor and Council of the District of Columbia, the Northern Virginia Transportation Commission and the Washington Suburban Transit Commission;

(2) the governing bodies of the counties and cities embraced within the Zone;

(3) the transportation agencies of the Signatories;

(4) the Washington Metropolitan Area Transit Commission;

(5) the Washington Metropolitan Council of Governments;

(6) the National Capital Planning Commission;
(7) the National Capital Regional Planning Council;
(8) the Maryland-National Capital Park and Planning Commission;
(9) the Northern Virginia Regional Planning and Economic Development Commission;
(10) the Maryland State Planning Department; and
(11) the private transit companies operating in the Zone and the Labor Unions representing the employees of such companies and employees of contractors providing services under operating contracts.

(b) A copy of the proposed mass transit plan, amendment or revision, shall be kept at the office of the Board and shall be available for public inspection. Information with respect thereto shall be released to the public. After thirty days' notice published once a week for two successive weeks in one or more newspapers of general circulation within the Zone, a public hearing shall be held with respect to the proposed plan, alteration, revision or amendment. The thirty days' notice shall begin to run on the first day the notice appears in any such newspaper. The Board shall consider the evidence submitted and statements and comments made at such hearing and may make any changes in the proposed plan, amendment or revision which it deems appropriate and such changes may be made without further hearing.

Article VII

Financing

Policy

16. With due regard for the policy of Congress for financing a mass transit plan for the Zone set forth in Section 204 (g) of the National Capital Transportation Act of 1960 (74 Stat. 537), it is hereby declared to be the policy of this Title that, as far as possible, the payment of all costs shall be borne by the persons using or benefiting from the Authority's facilities and services and any remaining costs shall be equitably shared among the federal, District of Columbia and participating local governments in the Zone. The allocation among such governments of such remaining cost shall be determined by agreement among them and shall be provided in the manner hereinafter specified.

Plan of Financing

17. (a) The Authority, in conformance with said policy, shall prepare and adopt a plan for financing the construction, acquisition and operation of facilities specified in a mass transit plan adopted pursuant to Article VI hereof, or in any alteration, revision or amendment thereof. Such plan of financing shall specify the facilities to be constructed or acquired, the cost thereof, the principal amount of revenue bonds, equipment trust certificates and other evidences of debt proposed to be issued, the principal terms and provisions of all loans and underlying agreements and indentures, estimated operating expenses and revenues and the proposed allocation among the federal, District of Columbia and participating local governments of the remaining costs and deficits, if any, and such other information as the Commission may consider appropriate.

(b) Such plan of financing shall constitute a proposal to the interested governments for financial participation and shall not impose any obligation on any government and such obligations shall be created only as provided in § 18 of this Article VII.

Commitments for Financial Participation

18. (a) Commitments on behalf of the portion of the Zone located in Virginia shall be by contract or agreement by the Authority with the Northern Virginia Transportation District, or its component governments, as authorized in the Transportation District Act of 1964 (Ch. 631, 1964 Virginia Acts of Assembly), to contribute to the capital required for the construction and/or acquisition of facilities specified in a mass transit plan adopted as provided in Article VI, or any alteration, revision or amendment thereof, and for meeting expenses and obligations in the operation of such facilities. No such contract or agreement, however, shall be entered into by the Authority with the Northern Virginia Transportation District unless said District has entered into the contracts or agreements with its member governments, as contemplated by § 1 (b) (4) of Article 4 of said Act, which contracts or agreements expressly provide that such contracts or agreements shall inure to the benefit of the Authority and shall be enforceable by the Authority in accordance with the provisions of § 2, Article 5 of said Act, and such contracts or agreements are acceptable to the Board. The General Assembly of Virginia hereby authorizes and designates the Authority as the agency to plan for and

provide transit facilities and services for the area of Virginia encompassed within the Zone within the contemplation of Article 1, § 3 (c) of said Act.

(b) Commitments on behalf of the portion of the Zone located in Maryland shall be by contract or agreement by the Authority with the Washington Suburban Transit District, pursuant to which the Authority undertakes to provide transit facilities and service in consideration for the agreement by said District to contribute to the capital required for the construction and/or acquisition of facilities specified in a mass transit plan adopted as provided in Article VI, or in any alteration, revision or amendment thereof, and for meeting expenses and obligations incurred in the operation of such facilities.

(c) With respect to the federal government, the commitment or obligation to render financial assistance shall be created by appropriation or in such other manner, or by such other legislation, as the Congress shall determine. Commitments by the District of Columbia shall be by contract or agreement between the governing body of the District of Columbia and the Authority, pursuant to which the Authority undertakes, subject to the provisions of § 20 hereof, to provide transit facilities and service in consideration for the undertaking by the District of Columbia to contribute to the capital required for the construction and/or acquisition of facilities specified in a mass transit plan adopted as provided in Article VI, or in any alteration, revision or amendment thereof, and for meeting expenses and obligations incurred in the operation of such facilities.

(d) (1) All payments made by the local Signatory governments for the Authority for the purpose of matching federal funds appropriated in any given year as authorized under Title VI, § 601, P.L. 110-432 regarding funding of capital and preventive maintenance projects of the Authority shall be made from amounts derived from dedicated funding sources.

(2) For purposes of this paragraph (d), a "dedicated funding source" means any source of funding that is earmarked or required under state or local law to be used to match federal appropriations authorized under Title VI, § 601, P.L. 110-432 for payments to the Authority.

Administrative Expenses

19. Prior to the time the Authority has receipts from appropriations and contracts or agreements as provided in § 18 of this Article VII, the expenses of the Authority for administration and for preparation of a mass transit and financing plan, including all engineering, financial, legal and other services required in connection therewith, shall, to the extent funds for such expenses are not provided through grants by the federal government, be borne by the District of Columbia, by the Washington Suburban Transit District and the component governments of the Northern Virginia Transportation District. Such expenses shall be allocated among such governments on the basis of population as reflected by the latest available population statistics of the Bureau of the Census; provided, however, that upon the request of any director the Board shall make the allocation upon estimates of population acceptable to the Board. The allocations shall be made by the Board and shall be included in the annual current expense budget prepared by the Board.

Acquisition of Facilities from Federal or Other Agencies

20. (a) The Authority is authorized to acquire by purchase, lease or grant or in any manner other than condemnation, from the federal government or any agency thereof, from the District of Columbia, Maryland or Virginia, or any political subdivision or agency thereof, any transit and related facilities, including real and personal property and all other assets, located within the Zone, whether in operation or under construction. Such acquisition shall be made upon such terms and conditions as may be agreed upon and subject to such authorization or approval by the Congress and the governing body of the District of Columbia, as may be required; provided, however, that if such acquisition imposes or may impose any further or additional obligation or liability upon the Washington Suburban Transit District, the Northern Virginia Transportation District, or any component government thereof, under any contract with the Authority, the Authority shall not make the acquisition until any such affected contract has been appropriately amended.

(b) For such purpose, the Authority is authorized to assume all liabilities and contracts relating thereto, to assume responsibility as primary obligor, endorser or guarantor on any outstanding revenue bonds, equipment trust certificates or other form of indebtedness authorized in this Act issued by such predecessor agency or agencies and, in connection therewith, to become a party to, and assume the obligations of, any indenture or loan agreement underlying or issued in connection with any outstanding securities or debts.

Temporary Borrowing

21. The Board may borrow, in anticipation of receipts, from any Signatory, the Washington Suburban Transit District, the Northern Virginia Transportation District, or any component government thereof, or from any lending institution for any purposes of this Title, including administrative expenses. Such loans shall be for a term not to exceed two years and at such rates on interest as shall be acceptable to the Board. The Signatories and any such political subdivision or agency may, in its discretion, make such loans from any available money.

Funding

22. The Board shall not construct or acquire any of the transit facilities specified in a mass transit plan adopted pursuant to the provisions of Article VI of this Title, or in any alteration, revision or amendment thereof, nor make any commitments or incur any obligations with respect thereto until funds are available therefor.

Article VIII

Budget

Capital Budget

23. The Board shall annually adopt a capital budget, including all capital projects it proposes to undertake or continue during the budget period, containing a statement of the estimated cost of each project and the method of financing thereof.

Current Expense Budget

24. The Board shall annually adopt a current expense budget for each fiscal year. Such budget shall include the Board's estimated expenditures for administration, operation, maintenance and repairs, debt service requirements and payments to be made into any funds required to be maintained. The total of such expenses shall be balanced by the Board's estimated revenues and receipts from all sources, excluding funds included in the capital budget or otherwise earmarked for other purposes.

Adoption and Distribution of Budgets

25. (a) Following the adoption by the Board of annual capital and current expense budgets, the general manager shall transmit certified copies of such budgets to the principal budget officer of the federal government, the District of Columbia, the Washington Suburban Transit District and of the component governments of the Northern Virginia Transportation Commission at such time and in such manner as may be required under their respective budgetary procedures.

(b) Each budget shall indicate the amounts, if any, required from the federal government, the government of the District of Columbia, the Washington Suburban Transit District and the component governments of the Northern Virginia Transportation District, determined in accordance with the commitments made pursuant to Article VII, § 18 of this Title, to balance each of said budgets.

Payment

26. Subject to such review and approval as may be required by their budgetary or other applicable processes, the federal government, the Government of the District of Columbia, the Washington Suburban Transit District and the component governments of the Northern Virginia Transportation District shall include in their respective budgets next to be adopted and appropriate or otherwise provide the amounts certified to each of them as set forth in the budgets.

Article IX

Revenue Bonds

Borrowing Power

27. The Authority may borrow money for any of the purposes of this Title, may issue its negotiable bonds and other evidences of indebtedness in respect thereto and may mortgage or pledge its properties, revenues and contracts as security therefor.

All such bonds and evidences of indebtedness shall be payable solely out of the properties and revenues of the Authority. The bonds and other obligations of the Authority, except as may be otherwise provided in the indenture under which they were issued, shall be direct and general obligations of the Authority and the full faith and credit of the Authority are hereby pledged for the prompt payment of the debt service thereon and for the fulfillment of all other undertakings of the Authority assumed by it to or for the benefit of the holders thereof.

Funds and Expenses

28. The purposes of this Title shall include, without limitation, all costs of any project or facility or any part thereof, including interest during a period of construction and for a period not to exceed two years thereafter and any incidental expenses (legal, engineering, fiscal, financial, consultant and other expenses) connected with issuing and disposing of the bonds; all amounts required for the creation of an operating fund, construction fund, reserve fund, sinking fund, or other special fund; all other expenses connected with administration, the planning, design, acquisition, construction, completion, improvement or reconstruction of any facility or any part thereof; and reimbursement of advances by the Board or by others for such purposes and for working capital.

Credit Excluded; Officers, State, Political Subdivisions and Agencies

29. The Board shall have no power to pledge the credit of any Signatory party, political subdivision or agency thereof, or to impose any obligation for payment of the bonds upon any Signatory party, political subdivision or agency thereof, but may pledge the contracts of such governments and agencies; provided, however, that the bonds may be underwritten in whole or in part as to principal and interest by the United States, or by any political subdivision or agency of any Signatory; provided, further, that any bonds underwritten in whole or in part as to principal and interest by the United States shall not be issued without approval of the Secretary of the Treasury. Neither the Directors nor any person executing the bonds shall be liable personally on the bonds of the Authority or be subject to any personal liability or accountability by reason of the issuance thereof.

Funding and Refunding

30. Whenever the Board deems it expedient, it may fund and refund the bonds and other obligations of the Authority whether or not such bonds and obligations have matured. It may provide for the issuance, sale or exchange of refunding bonds for the purpose of redeeming or retiring any bonds (including the payment of any premium, duplicate interest or cash adjustment required in connection therewith) issued by the Authority or issued by any other issuing body, the proceeds of the sale of which have been applied to any facility acquired by the Authority or which are payable out of the revenues of any facility acquired by the Authority. Bonds may be issued partly to refund bonds and other obligations then outstanding, and partly for any other purpose of the Authority. All provisions of this Title applicable to the issuance of bonds are applicable to refunding bonds and to the issuance, sale or exchange thereof.

Bonds; Authorization Generally

31. Bonds and other indebtedness of the Authority shall be authorized by resolution of the Board. The validity of the authorization and issuance of any bonds by the Authority shall not be dependent upon nor affected in any way by: (i) the disposition of bond proceeds by the Board or by contract, commitment or action taken with respect to such proceeds; or (ii) the failure to complete any part of the project for which bonds are authorized to be issued. The Authority may issue bonds in one or more series and may provide for one or more consolidated bond issues, in such principal amounts and with such terms and provisions as the Board may deem necessary. The bonds may be secured by a pledge of all or any part of the property, revenues and franchises under its control. Bonds may be issued by the Authority in such amount, with such maturities and in such denominations and form or forms, whether coupon or registered, as to principal alone or as to both principal and interest, as may be determined by the Board. The Board may provide for redemption of bonds prior to maturity on such notice and at such time or times and with such redemption provisions, including premiums, as the Board may determine.

Bonds; Resolution and Indentures Generally

32. The Board may determine and enter into indentures or adopt resolutions providing for the principal amount, date or dates, maturities, interest rate, or rates, denominations, form, registration, transfer, interchange and other provisions of bonds and coupons and the terms and conditions upon which the same shall be executed, issued, secured, sold, paid, redeemed, funded and refunded. The resolution of the Board authorizing any bond or any indenture so authorized under which the bonds are issued may include all such covenants and other provisions not inconsistent with the provisions of this Title, other than any restriction on the regulatory powers vested in the Board by this Title, as the Board may deem necessary or desirable for the issue, payment, security, protection or marketing of the bonds, including without limitation covenants and

other provisions as to the rates or amounts of fees, rents and other charges to be charged or made for use of the facilities; the use, pledge, custody, securing, application and disposition of such revenues, of the proceeds of the bonds, and of any other moneys or contracts of the Authority; the operation, maintenance, repair and reconstruction of the facilities and the amounts which may be expended therefor; the sale, lease or other disposition of the facilities; the insuring of the facilities and of the revenues derived therefrom; the construction or other acquisition of other facilities; the issuance of additional bonds or other indebtedness; the rights of the bondholders and of any trustee for the bondholders upon default by the Authority or otherwise; and the modification of the provisions of the indenture and of the bonds. Reference on the face of the bonds to such resolution or indenture by its date of adoption or the apparent date on the face thereof is sufficient to incorporate all of the provisions thereof and of this Title into the body of the bonds and their appurtenant coupons. Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to all of the provisions of the indenture and of this Title and is bound thereby.

Maximum Maturity

33. No bond or its terms shall mature in more than fifty years from its own date and in the event any authorized issue is divided into two or more series or divisions, the maximum maturity date herein authorized shall be calculated from the date on the face of each bond separately, irrespective of the fact that different dates may be prescribed for the bonds of each separate series or division of any authorized issue.

Tax Exemption

34. All bonds and all other evidences of debt issued by the Authority under the provisions of this Title and the interest thereon shall at all times be free and exempt from all taxation by or under authority of any Signatory parties, except for transfer, inheritance and estate taxes.

Interest

35. Bonds shall bear interest at such rate or rates as may be determined by the Board, payable annually or semiannually.

Place of Payment

36. The Board may provide for the payment of the principal and interest of bonds at any place or places within or without the Signatory states, and in any specified lawful coin or currency of the United States of America.

Execution

37. The Board may provide for the execution and authentication of bonds by the manual, lithographed or printed facsimile signature of members of the Board, and by additional authentication by a trustee or fiscal agent appointed by the Board; provided, however, that one of such signatures shall be manual; and provided, further, that no such additional authentication or manual signatures need be required in the case of bonds guaranteed by the United States of America. If any of the members whose signatures or countersignatures appear upon the bonds or coupons cease to be members before the delivery of the bonds or coupons, their signatures or countersignatures are nevertheless valid and of the same force and effect as if the members had remained in office until the delivery of the bonds and coupons.

Holding Own Bonds

38. The Board shall have power out of any funds available therefor to purchase its bonds and may hold, cancel or resell such bonds.

Sale

39. The Board may fix terms and conditions for the sale or other disposition of any authorized issue of bonds. The Board may sell bonds at less than their par or face value but no issue of bonds may be sold at an aggregate price below the par or face value thereof if such sale would result in a net interest cost to the Authority calculated upon the entire issue so sold in excess of the applicable rate determined by the Board, payable semiannually, computed with relation to the absolute maturity of the bonds according to standard tables of bond values, deducting the amount of any premium to be paid on the redemption of any bonds prior to maturity. All bonds issued and sold pursuant to this Title may be sold in such manner, either at public or private sale, as the Board shall determine.

Negotiability

40. All bonds issued under the provisions of this Title are negotiable instruments.

Bonds Eligible for Investment and Deposit

41. Bonds issued under the provisions of this Title are hereby made securities in which all public officers and public agencies of the Signatories and their political subdivisions and all banks, trust companies, savings and loan associations, investment companies and others carrying on a banking business, all insurance companies and insurance associations and others carrying on an insurance business, all administrators, executors, guardians, trustees and other fiduciaries, and all other persons may legally and properly invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any officer of any Signatory, or of any agency or political subdivision of any Signatory, for any purpose for which the deposit of bonds or other obligations of such Signatory is now or may hereafter be authorized by law.

Validation Proceedings

42. Prior to the issuance of any bonds, the Board may institute a special proceeding to determine the legality of proceedings to issue the bonds and their validity under the laws of any of the Signatory parties. Such proceeding shall be instituted and prosecuted in rem and the final judgment rendered therein shall be conclusive against all persons whomsoever and against each of the Signatory parties.

43. No indenture need be recorded or filed in any public office, other than the office of the Board. The pledge of revenues provided in any indenture shall take effect forthwith as provided therein and irrespective of the date of receipt of such revenues by the Board or the indenture trustee. Such pledge shall be effective as provided in the indenture without physical delivery of the revenues to the Board or to the indenture trustee.

Pledged Revenues

44. Bond redemption and interest payments shall, to the extent provided in the resolution or indenture, constitute a first, direct and exclusive charge and lien on all revenues received from the use and operation of the facility, and on any sinking or other funds created therefrom. All such revenues, together with interest thereon, shall constitute a trust fund for the security and payment of such bonds and except as and to the extent provided in the indenture with respect to the payment therefrom of expenses for other purposes including administration, operation, maintenance, improvements or extensions of the facilities or other purposes shall not be used or pledged for any other purpose so long as such bonds, or any of them, are outstanding and unpaid.

Remedies

45. The holder of any bond may for the equal benefit and protection of all holders of bonds similarly situated: (1) by mandamus or other appropriate proceedings require and compel the performance of any of the duties imposed upon the Board or assumed by it, its officers, agents or employees under the provisions of any indenture, in connection with the acquisition, construction, operation, maintenance, repair, reconstruction or insurance of the facilities, or in connection with the collection, deposit, investment, application and disbursement of the revenues derived from the operation and use of the facilities, or in connection with the deposit, investment and disbursement of the proceeds received from the sale of bonds; or (2) by action or suit in a court of competent jurisdiction of any Signatory party require the Authority to account as if it were the trustee of an express trust, or enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the bonds. The enumeration of such rights and remedies does not, however, exclude the exercise or prosecution of any other rights or remedies available to the holders of bonds.

Article X

Equipment Trust Certificates

Power

46. The Board shall have power to execute agreements, leases and equipment trust certificates with respect to the purchase of facilities or equipment such as cars, trolley buses and motor buses, or other craft, in the form customarily used in such cases and appropriate to effect such purchase, and may dispose of such equipment trust certificates in such manner as it may determine to be for the best interests of the Authority. Each vehicle covered by an equipment trust certificate shall have the name of the owner and lessor plainly marked upon both sides thereof, followed by the words "Owner and Lessor".

Payments

47. All moneys required to be paid by the Authority under the provisions of such agreements, leases and equipment trust certificates shall be payable solely from the revenue to be derived from the operation of the transit system or from such grants, loans, appropriations or other revenues, as may be available to the Board under the provisions of this Title. Payment for such facilities or equipment, or rentals thereof, may be made in installments, and the deferred installments may be evidenced by equipment trust certificates as aforesaid, and title to such facilities or equipment may not vest in the Authority until the equipment trust certificates are paid.

Procedure

48. The agreement to purchase facilities or equipment by the Board may direct the vendor to sell and assign the equipment to a bank or trust company, duly authorized to transact business in any of the Signatory states, or to the Housing and Home Finance Administrator, as trustee, lessor or vendor, for the benefit and security of the equipment trust certificates and may direct the trustee to deliver the facilities and equipment to one or more designated officers of the Board and may authorize the trustee simultaneously therewith to execute and deliver a lease of the facilities or equipment to the Board.

Agreements and Leases

49. The agreements and leases shall be duly acknowledged before some person authorized by law to take acknowledgments of deeds and in the form required for acknowledgment of deeds and such agreements, leases, and equipment trust certificates shall be authorized by resolution of the Board and shall contain such covenants, conditions and provisions as may be deemed necessary or appropriate to insure the payment of the equipment trust certificates from the revenues to be derived from the operation of the transit system and other funds.

The covenants, conditions and provisions of the agreements, leases and equipment trust certificates shall not conflict with any of the provisions of any resolution or trust agreement securing the payment of bonds or other obligations of the Authority then outstanding or conflict with or be in derogation of the rights of the holders of any such bonds or other obligations.

Law Governing

50. The equipment trust certificates issued hereunder shall be governed by Laws of the District of Columbia and for this purpose the chief place of business of the Authority shall be considered to be the District of Columbia. The filing of any documents required or permitted to be filed shall be governed by the Laws of the District of Columbia.

Article XI

Operation of Facilities

Operation by Contract or Lease

51. Any facilities and properties owned or controlled by the Authority may be operated by the Authority directly or by others pursuant to contract or lease as the Board may determine.

The Operating Contract

52. Without limitation upon the right of the Board to prescribe such additional terms and provisions as it may deem necessary and appropriate, the operating contract shall:

(a) specify the services and functions to be performed by the Contractor;

(b) provide that the Contractor shall hire, supervise and control all personnel required to perform the services and functions assumed by it under the operating contract and that all such personnel shall be employees of the Contractor and not of the Authority;

(c) require the Contractor to assume the obligations of the labor contract or contracts of any transit company which may be acquired by the Authority and assume the pension obligations of any such transit company;

(d) require the Contractor to comply in all respects with the labor policy set forth in Article XIV of this Title;

(e) provide that no transfer of ownership of the capital stock, securities or interests in any Contractor, whose principal business in the operating contract, shall be made without written approval of the Board and the certificates or other instruments representing such stock, securities or interests shall contain a statement of this restriction;

(f) provide that the Board shall have the sole authority to determine the rates or fares to be charged, the routes to be operated and the service to be furnished;

(g) specify the obligations and liabilities which are to be assumed by the Contractor and those which are to be the responsibility of the Authority;

(h) provide for an annual audit of the books and accounts of the Contractor by an independent certified public accountant to be selected by the Board and for such other audits, examinations and investigations of the books and records, procedures and affairs of the Contractor at such times and in such manner as the Board shall require, the cost of such audits, examinations and investigations to be borne as agreed by the parties in the operating contracts; and

(i) provided that no operating contract shall be entered into for a term in excess of five years; provided, that any such contract may be renewed for successive terms, each of which shall not exceed five years. Any such operating contract shall be subject to termination by the Board for cause only.

Compensation for Contractor

53. Compensation to the Contractor under the operating contract may, in the discretion of the Board, be in the form of (1) a fee paid by the Board to the Contractor for services, (2) a payment by the Contractor to the Board for the right to operate the system, or (3) such other arrangement as the Board may prescribe; provided, however, that the compensation shall bear a reasonable relationship to the benefits to the Authority and to the estimated costs the Authority would incur in directly performing the functions and duties delegated under the operating contract; and provided, further that no such contract shall create any right in the Contractor (1) to make or change any rate or fare or alter or change the service specified in the contract to be provided or (2) to seek judicial relief by any form of original action, review or other proceeding from any rate or fare or service prescribed by the Board. Any assertion, or attempted assertion, by the Contractor of the right to make or change any rate or fare or service prescribed by the Board shall constitute cause for termination of the operating contract. The operating contract may provide incentives for efficient and economical management.

Selection of Contractor

54. The Board shall enter into an operating contract only after formal advertisement and negotiations with all interested and qualified parties, including private transit companies rendering transit service within the Zone; provided, however, that, if the Authority acquires transit facilities from any agency of the federal or District of Columbia governments, in accordance with the provisions of Article VII, § 20 of this Title, the Authority shall assume the obligations of any operating contract which the transferor agency may have entered into.

Article XII

Coordination of Private and Public Facilities

Declaration of Policy

55. It is hereby declared that the interest of the public in efficient and economical transit service and in the financial well-being of the Authority and of the private transit companies requires that the public and private segments of the regional transit system be operated, to the fullest extent possible, as a coordinated system without unnecessary duplicating service.

Implementation of Policy

56. In order to carry out the legislative policy set forth in § 55 of this Article XII

(a) The Authority--

(1) except as herein provided, shall not, directly or through a Contractor, perform transit service by bus or similar motor vehicles;

(2) shall, in cooperation with the private carriers and WMATC coordinate to the fullest extent practicable, the schedules for service performed by its facilities with the schedules for service performed by private carriers; and

(3) shall enter into agreements with the private carriers to establish and maintain, subject to approval by WMATC, through routes and joint fares and provide for the division thereof, or, in the absence of such agreements, establish and maintain through routes and joint fares in accordance with orders issued by

WMATC directed to the private carriers when the terms and conditions for such through service and joint fares are acceptable to it.

(b) The WMATC, upon application, complaint, or upon its own motion, shall--

(1) direct private carriers to coordinate their schedules for service with the schedules for service performed by facilities owned or controlled by the Authority;

(2) direct private carriers to improve or extend any existing services or provide additional service over additional routes;

(3) authorize a private carrier, pursuant to agreement between said carrier and the Authority, to establish and maintain through routes and joint fares for transportation to be rendered with facilities owned or controlled by the Authority if, after hearing held upon reasonable notice, WMATC finds that such through routes and joint fares are required by the public interest; and

(4) in the absence of such an agreement with the Authority, direct a private carrier to establish and maintain through routes and joint fares with the Authority, if, after hearing held upon reasonable notice, WMATC finds that such through service and joint fares are required by the public interest; provided, however, that no such order, rule or regulation of WMATC shall be construed to require the Authority to establish and maintain any through route and joint fare.

(c) WMATC shall not authorize or require a private carrier to render any service, including the establishment or continuation of a joint fare for a through route service with the Authority which is based on a division thereof between the Authority and private carrier which does not provide a reasonable return to the private carrier, unless the carrier is currently earning a reasonable return on its operation as a whole in performing transportation subject to the jurisdiction of WMATC. In determining the issue of reasonable return, WMATC shall take into account any income attributable to the carrier, or to any corporation, firm or association owned in whole or in part by the carrier, from the Authority whether by way of payment for services or otherwise.

(d) If the WMATC is unable, through the exercise of its regulatory powers over the private carriers granted in subsection (b) hereof or otherwise, to bring about the requisite coordination of operations and service between the private carriers and the Authority, the Authority may in the situations specified in subsection (b) hereof, cause such transit service to be rendered by its Contractor by bus or other motor vehicle, as it shall deem necessary to effectuate the policy set forth in § 55 hereof. In any such situation, the Authority, in order to encourage private carriers to render bus service to the fullest extent practicable, may, pursuant to agreement, make reasonable subsidy payments to any private carrier.

(e) The Authority may acquire the capital stock or the transit facilities of any private transit company and may perform transit service, including service by bus or similar motor vehicle, with transit facilities so acquired, or with transit facilities acquired pursuant to Article VII, § 20. Upon acquisition of the capital stock or the transit facilities of any private transit company, the Authority shall undertake the acquisition, as soon as possible, of the capital stock or the transit facilities of each of the other private transit companies within the Zone requesting such acquisition. Lack of such request, however, shall not be construed to preclude the Authority from acquiring the capital stock or the transit facilities of any such company pursuant to § 82 of Article XVI.

Rights of Private Carriers Unaffected

57. Nothing in this title shall restrict or limit such rights and remedies, if any, that any private carrier may have against the Authority arising out of acts done or actions taken by the Authority hereunder. In the event any court of competent jurisdiction shall determine that the Authority has unlawfully infringed any rights of any private carrier or otherwise caused or permitted any private carrier to suffer legally cognizable injury, damages or harm and shall award a judgment therefor, such judgment shall constitute a lien against any and all of the assets and properties of the Authority.

Financial Assistance to Private Carriers

58. (a) The Board may accept grants from and enter into loan agreements with the Housing and Home Finance Administrator, pursuant to the provisions of the Urban Mass Transportation Act of 1964 (78 Stat. 302), or with any successor agency or under any law of similar purport, for the purpose of rendering financial assistance to private carriers.

(b) An application by the Board for any such grant or loan shall be based on and supported by a report from WMATC setting forth for each private carrier to be assisted (1) the equipment and facilities to be acquired, constructed, reconstructed, or improved, (2) the service proposed to be rendered by such equipment and facilities, (3) the improvement in service expected from such facilities and equipment, (4) how the use of such facilities and equipment will be coordinated with the transit facilities owned by the Authority, (5) the ability of the affected private carrier to repay any such loans or grants and (6) recommended terms for any such loans or grants.

(c) Any equipment or facilities acquired, constructed, reconstructed or improved with the proceeds of such grants or loans shall be owned by the Authority and may be made available to private carriers only by lease or other agreement which contain provisions acceptable to the Housing and Home Finance Administrator assuring that the Authority will have satisfactory continuing control over the use of such facilities and equipment.

Article XIII

Jurisdiction; Rates and Service

Washington Metropolitan Area Transit Commission

59. Except as provided herein, this Title shall not affect the functions and jurisdiction of WMATC, as granted by Titles I and II of this Compact, over the transportation therein specified and the persons engaged therein and the Authority shall have no jurisdiction with respect thereto.

Public Facilities

60. Service performed by transit facilities owned or controlled by the Authority, and the rates and fares to be charged for such service, shall be subject to the sole and exclusive jurisdiction of the Board and, notwithstanding any other provision in this Compact contained, WMATC shall have no authority with respect thereto, or with respect to any contractor in connection with the operation by it of transit facilities owned or controlled by the Authority. The determinations of the Board with respect to such matters shall not be subject to judicial review nor to the processes to any court.

Standards

61. Insofar as practicable, and consistent with the provision of adequate service at reasonable fares, the rates and fares and service shall be fixed by the Board so as to result in revenues which will:

(a) pay the operating expenses and provide for repairs, maintenance and depreciation of the transit system owned or controlled by the Authority;

(b) provide for payment of all principal and interest on outstanding revenue bonds and other obligations and for payment of all amounts to sinking funds and other funds as may be required by the terms of any indenture of loan agreement;

(c) provide for the purchase, lease or acquisition of rolling stock, including provisions for interest, sinking funds, reserve funds, or other funds required for the payment of any obligations incurred by the Authority for the acquisition of rolling stock; and

(d) provide funds for any purpose the Board deems necessary and desirable to carry out the purposes of this title.

Hearings

62. (a) The Board shall not raise any fare or rate, nor implement a major service reduction, except after holding a public hearing with respect thereto.

(b) Any Signatory, any political subdivision thereof, any agency of the federal government and any person, firm or association served by or using the transit facilities of the Authority and any private carrier may file a request with the Board for a hearing with respect to any rates or charges made by the Board or any service rendered with the facilities owned or controlled by the Authority. Such request shall be in writing, shall state the matter on which a hearing is requested and shall set forth clearly the matters and things on which the request relies. As promptly as possible after such a request is filed, the Board, or such officer or employee as it may designate, shall confer with the protestant with respect to the matters complained of. After such conference, the Board, if it deems the matter meritorious and of general significance, may call a hearing with respect to such request.

(c) The Board shall give at least fifteen days' notice for all public hearings. The notice shall be given by publication in a newspaper of daily circulation throughout the Transit Zone and such notice shall be published once a week for two successive weeks. The notice period shall start with the first day of publication. Notices of public hearings shall be posted in accordance with regulations promulgated by the Board.

(d) Prior to calling a hearing on any matter specified in this section, the Board shall prepare and file at its main office and keep open for public inspection its report relating to the proposed action to be considered at such hearing. Upon receipt by the Board of any report submitted by WMATC, in connection with a matter set for hearing, pursuant to the provisions of § 63 of this Article XIII, the Board shall file such report at its main office and make it available for public inspection. For hearings called by the Board pursuant to paragraph (b), above, the Board also shall cause to be lodged and kept open for public inspection the written request upon which the hearing is granted and all documents filed in support thereof.

Reference of Matters to WMATC

63. To facilitate the attainment of the public policy objectives for operation of the publicly and privately owned or controlled transit facilities as stated in Article XII, § 55, prior to the hearings provided for by § 62 hereof--

(a) The Board shall refer to WMATC for its consideration and recommendations, any matter which the Board considers may affect the operation of the publicly and privately owned or controlled transit facilities as a coordinated regional transit system and any matter for which the Board has called a hearing, pursuant to § 62 of this Article XIII, except that temporary or emergency changes in matters affecting service shall not be referred; and

(b) WMATC, upon such reference of any matter to it, shall give the referred matter preference over any other matters pending before it and shall, as expeditiously as practicable, prepare and transmit its report thereon to the Board. The Board may request WMATC to reconsider any part of its report or to make any supplemental reports it deems necessary. All of such reports shall be advisory only.

(c) Any report submitted by WMATC to the Board shall consider, without limitation, the probable effect of the matter or proposal upon the operation of the publicly and privately owned or controlled transit facilities as a coordinated regional system, passenger movements, fare structures, service and the impact on the revenues of both the public and private facilities.

Article XIV

Labor Policy

Construction

64. The Board shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors in the construction, alteration or repair, including painting and decorating, of projects, buildings and works which are undertaken by the Authority or are financially assisted by it, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), and every such employee shall receive compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in any workweek in excess of eight hours in any workday or forty hours in any workweek, as the case may be. A provision stating the minimum wages thus determined and the requirement that overtime be paid as above provided shall be set out in each project advertisement for bids and in each bid proposal form and shall be made a part of the contract covering the project, which contract shall be deemed to be a contract of the character specified in § 103 of the Contract Work Hours Standards Act (76 Stat. 357), as now or as may hereafter be in effect. The Secretary of Labor shall have, with respect to the administration and enforcement of the labor standards specified in this provision, the supervisory, investigatory and other authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176, 64 Stat. 1267, 5 U.S.C. 133z-15), and § 2 of the Act of June thirteen, nineteen hundred thirty-four, as amended (48 Stat. 948, as amended; 40 U.S.C. 276 (c)). The requirements of this section shall also be applicable with respect to the employment of laborers and mechanics in the construction, alteration or repair, including painting and decorating, of the transit facilities owned or controlled by the Authority where such activities are performed by a contractor pursuant to agreement with the operator of such facilities.

Equipment and Supplies

65. Contracts for the manufacture or furnishing of materials, supplies, articles and equipment shall be subject to the provisions of the Walsh-Healey Public Contracts Act (41 U.S.C. 35 et seq.), as now or as may hereafter be in effect.

Operations

66. (a) The rights, benefits, and other employee protective conditions and remedies of § 13 (c) of the Federal Transit Act, as amended (49 U.S.C. Section 5333 (b)), as determined by the Secretary of Labor, shall apply to Washington Metropolitan Area Transit Authority employees otherwise covered by the Act. The Authority shall extend to employees whose positions are adversely affected by the expenditure of federal funds obtained by WMATA pursuant to congressional appropriations, the rights, benefits, and other employee protective conditions and remedies of section 13 (c) of the Federal Transit Act, as amended (49 U.S.C. § 5333(b)).

(b) The Authority shall deal with and enter into written contracts with employees as defined in § 152 of Title 29, United States Code, through accredited representatives of such employees or representatives of any labor organization authorized to act for such employees concerning wages, salaries, hours, working conditions, and pension or retirement provisions. Each such contract entered into after the effective date of this act shall prohibit the contracting employees from engaging in any strike or an employer from engaging in any lockout.

(c) In case of any labor dispute involving the Authority and such employees where collective bargaining does not result in agreement, either party may declare that an impasse has been reached between the parties and may, by written notification to the other party and to the Federal Mediation and Conciliation Service, request the Service to appoint a mediator for the purpose of assisting them in reconciling their differences and resolving the controversy on terms which are mutually acceptable. Within five days of the receipt of the request the Federal Mediation and Conciliation Service shall appoint a mediator in accordance with its rules and procedures for such appointment. The mediator shall meet with the parties forthwith, either jointly or separately, and shall take such steps as he or she deems appropriate to persuade the parties to resolve their differences and effect a mutually acceptable agreement. The mediator shall not, however, make findings of fact or recommend terms of settlement. Each party shall pay one-half of the expenses of such mediator. If the mediator is unable to effect settlement of the controversy within fifteen days after his or her appointment, the Authority shall submit such dispute to fact finding by a board composed of three persons, one appointed by the Authority, one appointed by the labor organization representing the employees, and a third member to be agreed upon by the labor organization and the Authority. The member agreed upon by the labor organization and the Authority shall act as chairman of the board. The determination of the majority of the fact finding board thus established shall be advisory as to all matters in dispute. If after a period of ten days from the date of the appointment of the two persons representing the Authority and the labor organization, the third person has not been selected, then either of the two persons may request the Federal Mediation and Conciliation Service to furnish a list of five persons from which the third person shall be selected; provided, however, that the list shall not include the name of the person who served as mediator unless inclusion of his or her name is mutually agreed to by both parties. The persons appointed by the Authority and the labor organization, promptly after the receipt of such list shall determine by lot the order of elimination, and thereafter each shall in that order alternately eliminate one name until only one name remains. The remaining person on the list shall be the third member of the fact finding board. The term "labor dispute" shall be broadly construed and shall include any controversy concerning wages, salaries, hours, working conditions, or benefits including health and welfare, sick leave, insurance or pension or retirement provisions but not limited thereto, and including any controversy concerning any differences or questions that may arise between the parties including but not limited to the making or maintaining of collective bargaining agreements, the terms to be included in such agreements, and the interpretation or application of such collective bargaining agreements. Each party shall pay one-half of the expenses of such fact finding. Under no circumstances may the parties resort to binding arbitration after the date of enactment of this act or the expiration date of any contract requiring binding arbitration, whichever is later. This prohibition against binding arbitration shall not be interpreted to preclude such arbitration of individual employee grievances.

(d) The Authority is hereby authorized and empowered to establish and maintain a system of pensions and retirement benefits for such officers and employees of the Authority as may be designated or described by resolution of the Authority; to fix the terms of and restrictions on admission to such system and the classifications therein; to provide that persons eligible for admission in such pension system shall not be eligible for admission to, or receive any benefits from, any other pension system (except Social Security benefits), which is financed or funded, in whole or in part, directly or indirectly by funds paid or appropriated by the Authority to such other pension system, and to provide in connection with such pension system, a system of benefits payable to the beneficiaries and dependents of any participant in such pension system after the death of such participant (whether accidental or otherwise, whether occurring in the actual performance of duty or otherwise, or both) subject to such exceptions, conditions, restrictions and classifications as may be provided by resolution of the Authority. Such pension system shall be financed or funded by such means and in such manner as may be determined by the Authority to be economically feasible. Unless the Authority shall otherwise determine, no officer or employee of the Authority and no beneficiary or dependent of any such officer or employee shall be eligible to receive any pension or retirement or other benefits both from or under any such pension system and from or under any pension or retirement system established by an acquired transportation system or established or provided for, by or under the provisions of any collective bargaining agreement between the Authority and the representatives of its employees.

(e) Whenever the Authority acquires existing transit facilities from a public or privately owned utility either in proceeding by eminent domain or otherwise, the Authority shall assume and observe all existing labor contracts and pension obligations. When the Authority acquires an existing transportation system, all employees who are necessary for the operation thereof by the Authority shall be transferred to and appointed as employees of the Authority, subject to all the rights and benefits of this Title. These employees shall be given seniority credit and sick leave, vacation, insurance and pension credits in accordance with the records or labor agreements from the acquired transportation system. Members and beneficiaries of any pension or retirement system or other benefits established by the acquired transportation system shall continue to have rights, privileges, benefits, obligations and status with respect to such established system. The Authority shall assume the obligations of any transportation system acquired by it with regard to wages, salaries, hours, working conditions, sick leave, health and welfare and pension or retirement provisions for employees. It shall assume the provisions of any collective bargaining agreement between such acquired transportation system and the representatives of its employees. The Authority and the employees, through their representatives for collective bargaining purposes, shall take whatever action may be necessary to have pension trust funds presently under the joint control of the acquired transportation system and the participating employees through their representative transferred to the trust fund to be established, maintained and administered jointly by the Authority and the participating employees through their representatives. No employee of any acquired transportation system who is transferred to a position with the Authority shall by reason of such transfer be placed in any worse position with respect to workmen's compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance or any other benefits, than he enjoyed as an employee of such acquired transportation system.

(f) The Authority shall not require any person, as a condition of employment or continuation of employment, to join any labor union or labor organization. The Authority shall not require any person, as a condition of employment or continuation of employment, to pay any dues, fees, or other charges of any kind to any labor union or labor organization.

Article XV

Relocation Assistance

Relocation Program and Payments

67. Section 7 of the Urban Mass Transportation Act of 1964, and as the same may from time to time be amended, and all regulations promulgated thereunder, are hereby made applicable to individuals, families, business concerns and nonprofit organizations displaced from real property by actions of the Authority without regard to whether financial assistance is sought by or extended to the Authority under any provision of that Act; provided, however, that in the event real property is acquired for the Authority by an agency of the

federal government, or by a State or local agency or instrumentality, the Authority is authorized to reimburse the acquiring agency for relocation payments made by it.

Relocation of Public or Public Utility Facilities

68. Notwithstanding the provisions of § 67 of this Article XV, any highway or other public facility or any facilities of a public utility company which will be dislocated by reason of a project deemed necessary by the Board to effectuate the authorized purposes of this Title shall be relocated if such facilities are devoted to a public use, and the reasonable cost of relocation, if substitute facilities are necessary, shall be paid by the Board from any of its moneys.

Article XVI

General Provisions

Creation and Administration of Funds

69. (a) The Board may provide for the creation and administration of such funds as may be required. The funds shall be disbursed in accordance with rules established by the Board and all payments from any fund shall be reported to the Board. Moneys and such funds and other moneys of the Authority shall be deposited, as directed by the Board, in any branch or subsidiary of any state or national bank which has operations within the Zone, and having a total paid-in capital of at least one million dollars ($1,000,000). The trust department of any such state or national bank may be designated as a depositary to receive any securities acquired or owned by the Authority. The restriction with respect to paid-in capital may be waived for any such bank which agrees to pledge federal securities to protect the funds and securities of the Authority in such amounts and pursuant to such arrangements as may be acceptable to the Board.

(b) Any moneys of the Authority may, in the discretion of the Board and subject to any agreement or covenant between the Authority and the holders of any of its obligations limiting or restricting classes of investments, be invested in: (i) Direct obligations of or obligations guaranteed by the United States of America; (ii) Bonds, debentures, notes or other evidences of indebtedness issued by agencies of the United States of America, including but not limited to the following: Bank for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks, Federal National Mortgage Association; Student Loan Marketing Association; Government National Mortgage Association; Tennessee Valley Authority; or United States Postal Service; (iii) Securities that qualify as lawful investments and may be accepted as security for fiduciary, trust and public funds under the control of the United States or any officer or officers thereof, or securities eligible as collateral for deposits of moneys of the United States, including United States Treasury tax and loan accounts; (iv) Domestic and Eurodollar certificates of deposit; and (v) Bonds, debentures, notes or other evidences of indebtedness issued by a domestic corporation, such as a corporation organized under the laws of one of the states of the United States, provided that such obligations are nonconvertible and at the time of their purchase are rated in the highest rating categories by a nationally recognized bond rating agency.

Annual Independent Audit

70. (a) As soon as practical after the closing of the fiscal year, an audit shall be made of the financial accounts of the Authority. The audit shall be made by qualified certified public accountants selected by the Board, who shall have no personal interest direct or indirect in the financial affairs of the Authority or any of its officers or employees. The report of audit shall be prepared in accordance with generally accepted auditing principles and shall be filed with the Chairman and other officers as the Board shall direct. Copies of the report shall be distributed to each Director, to the Congress, to the Mayor and Council of the District of Columbia, to the Governors of Virginia and Maryland, to the Washington Suburban Transit Commission, to the Northern Virginia Transportation Commission and to the governing bodies of the political subdivisions located within the Zone which are parties to commitments for participation in the financing of the Authority and shall be made available for public distribution.

(b) The financial transactions of the Board shall be subject to audit by the United States General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where the accounts of the Board are kept.

(c) Any Director, officer or employee who shall refuse to give all required assistance and information to the accountants selected by the Board or who shall refuse to submit to them for examination such books, documents, records, files, accounts, papers, things or property as may be requested shall, in the discretion of the Board, forfeit his office.

Reports

71. The Board shall make and publish an annual report on its programs, operations, and finances, which shall be distributed in the same manner provided by § 70 of this Article XVI for the report of annual audit. It may also prepare, publish and distribute such other public reports and informational materials as it may deem necessary or desirable.

Insurance

72. The Board may self-insure or purchase insurance and pay the premiums therefor against loss or damage to any of its properties; against liability for injury to persons or property; and against loss of revenue from any cause whatsoever. Such insurance coverage shall be in such form and amount as the Board may determine, subject to the requirements of any agreement arising out of insurance of bonds or other obligations by the Authority.

Contracting and Purchasing

73. (a) (1) Except as provided in subsections (b), (c), and (f) of this section, and except in the case of procurement procedures otherwise expressly authorized by statute, the Authority in conducting a procurement of property, services, or construction shall:

(A) obtain full and open competition through the use of competitive procedures in accordance with the requirements of this Section; and

(B) use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

(2) In determining the competitive procedure appropriate under the circumstances, the Authority shall:

(A) solicit sealed bids if:

(i) time permits the solicitation, submission, and evaluation of sealed bids;

(ii) the award will be made on the basis of price and other price-related factors;

(iii) it is not necessary to conduct discussions with the responding sources about their bids; and

(iv) there is a reasonable expectation of receiving more than one sealed bid; or

(B) request competitive proposals if sealed bids are not appropriate under clause (A) of this paragraph.

(b) The Authority may provide for the procurement of property, services, or construction covered by this Section using competitive procedures but excluding a particular source in order to establish or maintain an alternative source or sources of supply for that property, service, or construction if the Authority determines that excluding the source would increase or maintain competition and would likely result in reduced overall costs for procurement of property, services, or construction.

(c) The Authority may use procedures other than competitive procedures if:

(1) the property, services, or construction needed by the Authority is available from only one responsible source and no other type of property, services, or construction will satisfy the needs of the Authority; or

(2) the Authority's need for the property, services, or construction is of such an unusual and compelling urgency that the Authority would be seriously injured unless the Authority limits the number of sources from which it solicits bids or proposals; or

(3) the Authority determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement; or

(4) the property or services needed can be obtained through federal or other governmental sources at reasonable prices.

(d) For the purpose of applying subsection (c) (1) of this Section:

(1) in the case of a contract for property, services, or construction to be awarded on the basis of acceptance of an unsolicited proposal, the property, services, or construction shall be deemed to be available from only one responsible source if the source has submitted an unsolicited proposal that demonstrates a concept:

(A) that is unique and innovative or, in the case of a service, for which the source demonstrates a unique capability to provide the service; and

(B) the substance of which is not otherwise available to the Authority and does not resemble the substance of a pending competitive procurement.

(2) in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment or the continued provision of highly specialized services, the property, services, or construction may be deemed to be available from only the original source and may be procured through procedures other than competitive procedures if it is likely that award to a source other than the original source would result in:

(A) substantial duplication of cost to the Authority that is not expected to be recovered through competition; or

(B) unacceptable delays in fulfilling the Authority's needs.

(e) If the Authority uses procedures other than competitive procedures to procure property, services, or construction under subsection (c) (2) of this Section, the Authority shall request offers from as many potential sources as is practicable under the circumstances.

(f) (1) To promote efficiency and economy in contracting, the Authority may use simplified acquisition procedures for purchases of property, services and construction.

(2) For the purposes of this subsection, simplified acquisition procedures may be used for purchases for an amount that does not exceed the simplified acquisition threshold adopted by the federal government.

(3) A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the procedures under paragraph (1) of this subsection.

(4) In using simplified acquisition procedures, the Authority shall promote competition to the maximum extent practicable.

(g) The Board shall adopt policies and procedures to implement this Section. The policies and procedures shall provide for publication of notice of procurements and other actions designed to secure competition where competitive procedures are used.

(h) The Authority in its discretion may reject any and all bids or proposals received in response to a solicitation.

Rights-of-Way

74. The Board is authorized to locate, construct and maintain any of its transit and related facilities in, upon, over, under or across any streets, highways, freeways, bridges and any other vehicular facilities, subject to the applicable laws governing such use of such facilities by public agencies. In the absence of such laws, such use of such facilities by the Board shall be subject to such reasonable conditions as the highway department or other affected agency of a Signatory party may require; provided, however, that the Board shall not construct or operate transit or related facilities upon, over, or across any parkways or park lands without the consent of, and except upon the terms and conditions required by, the agency having jurisdiction with respect to such parkways and park lands, but may construct or operate such facilities in a subway under such parkways or park lands upon such reasonable terms and conditions as may be specified by the agency having jurisdiction with respect thereto.

Compliance with Laws, Regulations and Ordinances

75. The Board shall comply with all laws, ordinances and regulations of the Signatories and political subdivisions and agencies thereof with respect to use of streets, highways and all other vehicular facilities, traffic control and regulation, zoning, signs and buildings.

Police Security

76. (a) The Authority is authorized to establish and maintain a regular police force, to be known as the Metro Transit Police, to provide protection for its patrons, personnel, and Transit facilities. The Metro Transit Police shall have the powers and duties and shall be subject to the limitations set forth in this section. It shall be composed of both uniformed and plain clothes personnel and shall be charged with the duty of enforcing the laws of the Signatories, and the laws, ordinances, and regulations of the political subdivisions thereof in the Transit Zone, and the rules and regulations of the Authority. The jurisdiction of the Metro Transit Police

shall include all the Transit facilities (including bus stops) owned, controlled, or operated by the Authority, but this restriction shall not limit the power of the Metro Transit Police to make arrests in the Transit Zone for violations committed upon, to, or against such Transit facilities committed from within or outside such Transit facilities while in hot or close pursuit, or to execute traffic citations and criminal process in accordance with subsection (c) below. The members of the Metro Transit Police shall have concurrent jurisdiction in the performance of their duties with the duly constituted law-enforcement agencies of the Signatories and of the political subdivisions thereof in which any Transit facility of the Authority is located or in which the Authority operates any Transit service. On-duty Metro Transit Police officers are authorized to make arrests off of Transit facilities within the Transit Zone when immediate action is necessary to protect the health, safety, welfare or property of an individual from actual or threatened harm or from an unlawful act. Nothing contained in this section shall either relieve any Signatory or political subdivision or agency thereof from its duty to provide police, fire, and other public safety service and protection, or limit, restrict, or interfere with the jurisdiction of or the performance of duties by the existing police, fire, and other public safety agencies. For purposes of this section, "bus stop" means that area within 150 feet of a MetroBus bus stop sign, excluding the interior of any building not owned, controlled or operated by the Washington Metropolitan Area Transit Authority.

(b) A member of the Metro Transit Police shall have same powers, including the power of arrest, and shall be subject to the same limitations, including regulatory limitations, in the performance of his duties as a member of the duly constituted police force of the political subdivision in which the Metro Transit Police member is engaged in the performance of his duties. A member of the Metro Transit Police is authorized to carry and use only such weapons, including handguns, as are issued by the Authority. A member of the Metro Transit Police is subject to such additional limitations in the use of weapons as are imposed on the duly constituted police force for the political subdivision in which he is engaged in the performance of his duties.

(c) Members of the Metro Transit Police shall have power to execute on the Transit facilities owned, controlled, or operated by the Authority any traffic citation or any criminal process issued by any court of any Signatory or of any political subdivision of a Signatory, for any felony, misdemeanor, or other offense against the laws, ordinances, rules, or regulations specified in subsection (a). With respect to offenses committed upon, to, or against the Transit facilities owned, controlled, or operated by the Authority, the Metro Transit Police shall have power to execute criminal process within the Transit Zone.

(d) Upon the apprehension or arrest of any person by a member of the Metro Transit Police pursuant to the provisions of subsection (b), the officer, as required by the law of the place of apprehension or arrest, shall either issue a summons or a citation against the person, book the person, or deliver the person to the duly constituted police or judicial officer of the Signatory or political subdivision where the apprehension or arrest is made, for disposition as required by law.

(e) The Authority shall have the power to adopt rules and regulations for the safe, convenient, and orderly use of the Transit facilities owned, controlled, or operated by the Authority, including the payment and the manner of the payment of fares or charges therefor, the protection of the Transit facilities, the control of traffic and parking upon the Transit facilities, and the safety and protection of the riding public. In the event that any such rules and regulations contravene the laws, ordinances, rules, or regulations of a Signatory or any political subdivision thereof which are existing or subsequently enacted, these laws, ordinances, rules, or regulations of the Signatory or the political subdivision shall apply and the conflicting rule or regulation, or portion thereof, of the Authority shall be void within the jurisdiction of that Signatory or political subdivision. In all other respects the rules and regulations of the Authority shall be uniform throughout the Transit Zone. The rules and regulations established under this subsection shall be adopted by the Board following public hearings held in accordance with Section 62 (c) and (d) of this Compact. The final regulation shall be published in a newspaper of general circulation within the Zone at least 15 days before its effective date. Any person violating any rule or regulation of the Authority shall be subject to arrest and, upon conviction by a court of competent jurisdiction, shall pay a fine of not more than two hundred fifty dollars ($250) and costs. Criminal violations of any rule or regulation of the Authority shall be prosecuted by the Signatory or political subdivision in which the violation occurred, in the same manner by which violations of law, ordinances, rules and regulations of the Signatory or political subdivisions are prosecuted.

(f) With respect to members of the Metro Transit Police, the Authority shall:

(1) Establish classifications based on the nature and scope of duties, and fix and provide for their qualification, appointment, removal, tenure, term, compensation, pension, and retirement benefits;

(2) Provide for their training and, for this purpose, the Authority may enter into contracts or agreements with any public or private organization engaged in police training, and this training and the qualifications of the uniformed and plain clothes personnel shall at least equal the requirements of each Signatory and of the political subdivisions therein in the Transit Zone for their personnel performing comparable duties; and

(3) Prescribe distinctive uniforms to be worn.

(g) The Authority shall have the power to enter into agreements with the Signatories, the political subdivisions thereof in the Transit Zone, and public safety agencies located therein, including those of the Federal Government, for the delineation of the functions and responsibilities of the Metro Transit Police and the duly constituted police, fire, and other public safety agencies, and for mutual assistance.

(h) Before entering upon the duties of office, each member of the Metro Transit Police shall take or subscribe to an oath or affirmation, before a person authorized to administer oaths, faithfully to perform the duties of that office.

Exemption from Regulation

77. Except as otherwise provided in this Title, any Transit service rendered by Transit facilities owned or controlled by the Authority and the Authority or any corporation, firm or association performing such transit service pursuant to an operating contract with the Authority, shall, in connection with the performance of such service, be exempt from all laws, rules, regulations and orders of the Signatories and of the United States otherwise applicable to such transit service and persons, except that laws, rules, regulations and orders relating to inspection of equipment and facilities, safety and testing shall remain in force and effect; provided, however, that the Board may promulgate regulations for the safety of the public and employees not inconsistent with the applicable laws, rules, regulations or orders of the Signatories and of the United States.

Tax Exemption

78. It is hereby declared that the creation of the Authority and the carrying out of the corporate purposes of the Authority is in all respects for the benefit of the people of the Signatory states and is for a public purpose and that the Authority and the Board will be performing an essential governmental function, including, without limitation, proprietary, governmental and other functions, in the exercise of the powers conferred by this Title. Accordingly, the Authority and the Board shall not be required to pay taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession or supervision or upon its activities in the operation and maintenance of any Transit facilities or upon any revenues therefrom and the property and income derived therefrom shall be exempt from all federal, State, District of Columbia, municipal and local taxation. This exemption shall include, without limitation, all motor vehicle license fees, sales taxes and motor fuel taxes.

Reduced Fares

79. The District of Columbia, the Northern Virginia Transportation District, the Washington Suburban Transit District and the component governments thereof, may enter into contracts or agreements with the Authority to make equitable payments for fares lower than those established by the Authority pursuant to the provisions of Article XIII hereof for any specified class or category of riders.

Liability for Contracts and Torts

80. The Authority shall be liable for its contracts and for its torts and those of its Directors, officers, employees and agents committed in the conduct of any proprietary function, in accordance with the law of the applicable Signatory (including rules on conflict of laws), but shall not be liable for any torts occurring in the performance of a governmental function. The exclusive remedy for such breach of contracts and torts for which the Authority shall be liable, as herein provided, shall be by suit against the Authority. Nothing contained in this Title shall be construed as a waiver by the District of Columbia, Maryland, Virginia and the counties and cities within the Zone of any immunity from suit.

Jurisdiction of Courts

81. The United States District Courts shall have original jurisdiction, concurrent with the courts of Maryland, Virginia and the District of Columbia, of all actions brought by or against the Authority and to

enforce subpoenas issued under this Title. Any such action initiated in a State or District of Columbia Court shall be removable to the appropriate United States District Court in the manner provided by Act of June 25, 1948, as amended (28 U.S.C. 1446).

Condemnation

82. (a) The Authority shall have the power to acquire by condemnation, whenever in its opinion it is necessary or advantageous to the Authority to do so, any real or personal property, or any interest therein, necessary or useful for the transit system authorized herein, except property owned by the United States, by a Signatory, or any political subdivision thereof, whenever such property cannot be acquired by negotiated purchase at a price satisfactory to the Authority.

(b) Proceedings for the condemnation of property in the District of Columbia shall be instituted and maintained under the Act of December 23, 1963 (77 Stat. 577-581, D.C. Code 1961, Supp. IV, Sections 1351-1368). Proceedings for the condemnation of property located elsewhere within the Zone shall be instituted and maintained, if applicable, pursuant to the provisions of the Act of August 1, 1888, as amended (25 Stat. 357, 40 U.S.C. 257) and the Act of June 25, 1948 (62 Stat. 935 and 937, 28 U.S.C. 1358 and 1403) or any other applicable act; provided, however, that if there is no applicable federal law, condemnation proceedings shall be in accordance with the provisions of the state law of the Signatory in which the property is located governing condemnation by the highway agency of such state. Whenever the words "real property," "realty," "land," "easement," "right-of-way," or words of similar meaning are used in any applicable federal or state law relating to procedure, jurisdiction and venue, they shall be deemed, for the purposes of this Title, to include any personal property authorized to be acquired hereunder.

(c) Any award or compensation for the taking of property pursuant to this Title shall be paid by the Authority, and none of the Signatory parties nor any other agency, instrumentality or political subdivision thereof shall be liable for such award or compensation.

Enlargement and Withdrawal; Duration

83. (a) When advised in writing by the Northern Virginia Transportation Commission or the Washington Suburban Transit Commission that the geographical area embraced therein has been enlarged, the Board, upon such terms and conditions as it may deem appropriate, shall by resolution enlarge the Zone to embrace the additional area.

(b) The duration of this Title shall be perpetual but any Signatory thereto may withdraw therefrom upon two years' written notice to the Board.

(c) The withdrawal of any Signatory shall not relieve such Signatory, any transportation district, county or city or other political subdivision thereof from any obligation to the Authority, or inuring to the benefit of the Authority, created by contract or otherwise.

Amendments and Supplements

84. Amendments and supplements to this Title to implement the purposes thereof may be adopted by legislative action of any of the Signatory parties concurred in by all of the others. When one Signatory adopts an amendment or supplement to an existing Section of the Compact, that amendment or supplement shall not be immediately effective, and the previously enacted provision or provisions shall remain in effect in each jurisdiction until the amendment or supplement is approved by the other Signatories and is consented to by Congress.

Construction and Severability

85. The provisions of this Title and of the agreements thereunder shall be severable and if any phrase, clause, sentence or provision of this Title or any such agreement is declared to be unconstitutional or the applicability thereof to any Signatory party, political subdivision or agency thereof is held invalid, the constitutionality of the remainder of this Title or any such agreement and the applicability thereof to any other Signatory party, political subdivision or agency thereof or circumstance shall not be affected thereby. It is the legislative intent that the provisions of this Title be reasonably and liberally construed.

Effective Date; Execution

86. This Title shall be adopted by the Signatories in the manner provided by law therefor and shall be signed and sealed in four duplicate original copies. One such copy shall be filed with the Secretary of State of each of the Signatory parties or in accordance with laws of the State in which the filing is made, and one copy

shall be filed and retained in the archives of the Authority upon its organization. This Title shall become effective ninety days after the enactment of concurring legislation by or on behalf of the District of Columbia, Maryland and Virginia and consent thereto by the Congress and all other acts or actions have been taken, including the signing and execution of the Title by the Governors of Maryland and Virginia and the Mayor and Council of the District of Columbia. (1966, c. 2; 1969, Ex. Sess., c. 21; 1970, c. 590; 1972, c. 571; 1973, c. 508; 1974, c. 576; 1977, c. 592; 1981, c. 378; 1984, c. 610; 1987, c. 112; 1995, c. 150; 1997, c. 736; 2009, cc. 771, 828)

CHAPTER 32.

METROPOLITAN PLANNING ORGANIZATIONS.

§ 33.2-3200. Metropolitan planning organizations; membership.

Any metropolitan planning organization may vote, upon the prior written authorization of the Governor, to have its membership expanded to include members of the House of Delegates as selected by the Speaker of the House of Delegates and members of the Senate as selected by the Senate Committee on Rules.

§ 33.2-3201. Transportation planning duties and responsibilities of Metropolitan planning organizations.

The metropolitan planning organizations (MPOs) of the Commonwealth shall be responsible for the development of regional long-range transportation plans for the regions they represent in accordance with federal regulation. Each such long-range plan shall include a fiscally constrained list of all multimodal transportation projects, including those managed at the statewide level either by the Department of Transportation or the Department of Rail and Public Transportation. The purpose of the regional long-range transportation plan is to comply with federal regulations and provide the MPOs and the region a source of candidate projects for use by the MPOs in developing regional Transportation Improvement Programs (TIPs) and serving as an input to assist the Commonwealth with the development of the Statewide Transportation Plan (VTrans).

The MPOs shall:

1. Develop amendments for their regional TIPs in accordance with federal regulations;

2. Coordinate planning and programming actions with those of the Commonwealth and duly established public transit agencies in accordance with federal regulations;

3. Examine the structure and cost of transit operations within the regions they represent and incorporate the results of these inquiries into their plans and endorse long-range plans for assuring maximum utilization and integration of mass transportation facilities throughout the Commonwealth; and

4. Conduct a public involvement process focused on projects and topics that will best enable them to develop and approve Long Range Transportation Plans (LRTPs) that shall be submitted for approval by their board and forwarded to the Commonwealth Transportation Board and updated as required by federal regulations.

§ 33.2-3202. Distribution of certain federal funds.

Metropolitan planning organizations (MPOs) as defined under 23 U.S.C. § 134 and § 8 of the Federal Transit Act shall be authorized to issue contracts for studies and to develop and approve transportation plans and improvement programs to the full extent permitted by federal law.

The Commonwealth Transportation Board, the Department of Transportation, and the Department of Rail and Public Transportation shall develop and implement a decision-making process that provides MPOs and regional transportation planning bodies a meaningful opportunity for input into transportation decisions that impact the transportation system within their boundaries. Such a process shall provide the MPOs and regional transportation planning bodies with the Commonwealth Transportation Board's priorities for development of the Six-Year Improvement Program developed pursuant to § 33.2-214 and an opportunity for them to identify their regional priorities for consideration.

2. That whenever any of the conditions, requirements, provisions, or contents of any section or chapter of Chapters 45 (§§ 15.2-4500 through 15.2-4534), 48.2 (§ 15.2-4829 et seq.), 70 (§ 15.2-7000 et seq.), and 71 (§ 15.2-7022 et seq.) of Title 15.2, Title 33.1 (§§ 33.1-1 through 33.1-465), Chapters 18 (§§ 56-529 and 56-530) and 22 (§ 56-556 et seq.) of Title 56, and §§ 58.1-815 and 58.1-815.1 of the Code of Virginia or any other title of the Code of Virginia as such titles existed prior to October 1, 2014, are transferred in

the same or modified form to a new section or chapter of Title 33.2 or any other title of the Code of Virginia and whenever any such former section or chapter is given a new number in Title 33.2 or any other title of the Code of Virginia, all references to any such former section or chapter of Chapters 45 (§§ 15.2-4500 through 15.2-4534), 48.2 (§ 15.2-4829 et seq.), 70 (§ 15.2-7000 et seq.), and 71 (§ 15.2-7022 et seq.) of Title 15.2, Title 33.1 (§§ 33.1-1 through 33.1-465), Chapters 18 (§§ 56-529 and 56-530) and 22 (§ 56-556 et seq.) of Title 56, and §§ 58.1-815 and 58.1-815.1 of the Code of Virginia or any other title of the Code of Virginia shall be construed to apply to the new or renumbered section or chapter containing such conditions, requirements, provisions, contents, or portions thereof.

3. That the regulations of any department or agency affected by the revision of Chapters 45 (§§ 15.2-4500 through 15.2-4534), 48.2 (§§ 15.2-4829 through 15.2-4840), 70 (§§ 15.2-7000 through 15.2-7021), and 71 (§§ 15.2-7022 through 15.2-7035) of Title 15.2, Title 33.1 (§§ 33.1-1 through 33.1-465), Chapters 18 (§§ 56-529 and 56-530) and 22 (§§ 56-556 through 56-575) of Title 56, and §§ 58.1-815 and 58.1-815.1 of the Code of Virginia or such other titles in effect on the effective date of this act shall continue in effect to the extent that they are not in conflict with this act and shall be deemed to be regulations adopted under this act.

4. That the provisions of § 30-152 of the Code of Virginia shall apply to the revision of Title 33.1 of the Code of Virginia so as to give effect to other laws enacted by the 2014 Session of the General Assembly, notwithstanding the delay in the effective date of this act.

5. That the repeal of Chapters 45 (§§ 15.2-4500 through 15.2-4534), 48.2 (§§ 15.2-4829 through 15.2-4840), 70 (§§ 15.2-7000 through 15.2-7021), and 71 (§§ 15.2-7022 through 15.2-7035) of Title 15.2, Title 33.1 (§§ 33.1-1 through 33.1-465), Chapters 18 (§§ 56-529 and 56-530) and 22 (§§ 56-556 through 56-575) of Title 56, and §§ 58.1-815 and 58.1-815.1 of the Code of Virginia and Chapter 693 of the Acts of Assembly of 1954, Chapters 462 and 714 of the Acts of Assembly of 1956, Chapter 24 of the Acts of Assembly of 1959, Extra Session, Chapters 228 and 605 of the Acts of Assembly of 1962, Chapter 348 of the Acts of Assembly of 1964, Chapter 203 of the Acts of Assembly of 1990, Chapter 548 of the Acts of Assembly of 1998, Chapters 238 and 705 of the Acts of Assembly of 2000, and Chapters 270 and 297 of the Acts of Assembly of 2005 (expired January 1, 2006), effective as of October 1, 2014, shall not affect any act or offense done or committed, or any penalty incurred, or any right established, accrued, or accruing on or before such date, or any proceeding, prosecution, suit, or action pending on that date. Except as otherwise provided in this act, neither the repeal of Chapters 45 (§§ 15.2-4500 through 15.2-4534), 48.2 (§§ 15.2-4829 through 15.2-4840), 70 (§§ 15.2-7000 through 15.2-7021), and 71 (§§ 15.2-7022 through 15.2-7035) of Title 15.2, Title 33.1 (§§ 33.1-1 through 33.1-465), Chapters 18 (§§ 56-529 and 56-530) and 22 (§§ 56-556 through 56-575) of Title 56, and §§ 58.1-815 and 58.1-815.1 of the Code of Virginia and Chapter 693 of the Acts of Assembly of 1954, Chapters 462 and 714 of the Acts of Assembly of 1956, Chapter 24 of the Acts of Assembly of 1959, Extra Session, Chapters 228 and 605 of the Acts of Assembly of 1962, Chapter 348 of the Acts of Assembly of 1964, Chapter 203 of the Acts of Assembly of 1990, Chapter 548 of the Acts of Assembly of 1998, Chapters 238 and 705 of the Acts of Assembly of 2000, and Chapters 270 and 297 of the Acts of Assembly of 2005 (expired January 1, 2006) nor the enactment of Title 33.2 shall apply to offenses committed prior to October 1, 2014, and prosecution for such offenses shall be governed by the prior law, which is continued in effect for that purpose. For the purpose of this enactment, an offense was committed prior to October 1, 2014, if any of the essential elements of the offense occurred prior thereto.

6. That any notice given, recognizance taken, or process or writ issued before October 1, 2014, shall be valid although given, taken, or to be returned to a day after such date, in like manner as if Title 33.2 had been effective before the same was given, taken, or issued.

7. That if any clause, sentence, paragraph, subdivision, subsection, or section of Title 33.2 shall be adjudged in any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, subsection, or section thereof directly involved in the controversy in which the judgment shall have been rendered, and to this end the provisions of Title 33.2 are declared severable.

8. That references to the State Highway and Transportation Board, the State Highway Commission, or the State Highway and Transportation Commission shall be continued as references to the Commonwealth Transportation Board. Wherever either "Commission" or "Board" is used referring to the State Highway and Transportation Board, the State Highway Commission, or the State Highway and Transportation Commission, it shall mean the Commonwealth Transportation Board.

9. That the repeal of Chapters 45 (§§ 15.2-4500 through 15.2-4534), 48.2 (§§ 15.2-4829 through 15.2-4840), 70 (§§ 15.2-7000 through 15.2-7021), and 71 (§§ 15.2-7022 through 15.2-7035) of Title 15.2, Title 33.1 (§§ 33.1-1 through 33.1-465), Chapters 18 (§§ 56-529 and 56-530) and 22 (§§ 56-556 through 56-575) of Title 56, and §§ 58.1-815 and 58.1-815.1 of the Code of Virginia and Chapter 693 of the Acts of Assembly of 1954, Chapters 462 and 714 of the Acts of Assembly of 1956, Chapter 24 of the Acts of Assembly of 1959, Extra Session, Chapters 228 and 605 of the Acts of Assembly of 1962, Chapter 348 of the Acts of Assembly of 1964, Chapter 203 of the Acts of Assembly of 1990, Chapter 548 of the Acts of Assembly of 1998, Chapters 238 and 705 of the Acts of Assembly of 2000, and Chapters 270 and 297 of the Acts of Assembly of 2005 (expired January 1, 2006), effective as of October 1, 2014, shall not affect the validity, enforceability, or legality of any loan agreement or other contract, or any right established or accrued under such loan agreement or contract, that existed prior to such repeal.

10. That the repeal of Chapters 45 (§§ 15.2-4500 through 15.2-4534), 48.2 (§§ 15.2-4829 through 15.2-4840), 70 (§§ 15.2-7000 through 15.2-7021), and 71 (§§ 15.2-7022 through 15.2-7035) of Title 15.2, Title 33.1 (§§ 33.1-1 through 33.1-465), Chapters 18 (§§ 56-529 and 56-530) and 22 (§§ 56-556 through 56-575) of Title 56, and §§ 58.1-815 and 58.1-815.1 of the Code of Virginia and Chapter 693 of the Acts of Assembly of 1954, Chapters 462 and 714 of the Acts of Assembly of 1956, Chapter 24 of the Acts of Assembly of 1959, Extra Session, Chapters 228 and 605 of the Acts of Assembly of 1962, Chapter 348 of the Acts of Assembly of 1964, Chapter 203 of the Acts of Assembly of 1990, Chapter 548 of the Acts of Assembly of 1998, Chapters 238 and 705 of the Acts of Assembly of 2000, and Chapters 270 and 297 of the Acts of Assembly of 2005 (expired January 1, 2006), effective as of October 1, 2014, shall not affect the validity, enforceability, or legality of any bond or other debt obligation authorized, issued, or outstanding prior to such repeal.

11. That Chapters 45 (§§ 15.2-4500 through 15.2-4534), 48.2 (§§ 15.2-4829 through 15.2-4840), 70 (§§ 15.2-7000 through 15.2-7021), and 71 (§§ 15.2-7022 through 15.2-7035) of Title 15.2, Title 33.1 (§§ 33.1-1 through 33.1-465), Chapters 18 (§§ 56-529 and 56-530) and 22 (§§ 56-556 through 56-575) of Title 56, and §§ 58.1-815 and 58.1-815.1 of the Code of Virginia and Chapter 693 of the Acts of Assembly of 1954, Chapters 462 and 714 of the Acts of Assembly of 1956, Chapter 24 of the Acts of Assembly of 1959, Extra Session, Chapters 228 and 605 of the Acts of Assembly of 1962, Chapter 348 of the Acts of Assembly of 1964, Chapter 203 of the Acts of Assembly of 1990, Chapter 548 of the Acts of Assembly of 1998, Chapters 238 and 705 of the Acts of Assembly of 2000, and Chapters 270 and 297 of the Acts of Assembly of 2005 (expired January 1, 2006) are repealed.

12. That the provisions of this act shall become effective on October 1, 2014.

13. That the provisions of this act shall not affect the existing terms of persons currently serving as members of any agency, board, authority, commission, or other entity and that appointees currently holding positions shall maintain their terms of appointment and continue to serve until such time as the existing terms might expire or become renewed. However, any new appointments made on or after October 1, 2014, shall be made in accordance with the provisions of this act.