

VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

CHAPTER 611

An Act to amend the Code of Virginia by adding in Title 33.1 a chapter numbered 15, consisting of sections numbered 33.1-430 through 33.1-446, relating to local transportation districts in counties having populations greater than 500,000.

[H 2671]

Approved March 24, 2001

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 33.1 a chapter numbered 15, consisting of sections numbered 33.1-430 through 33.1-446, as follows:

CHAPTER 15.

TRANSPORTATION DISTRICTS WITHIN CERTAIN COUNTIES.

§ 33.1-430. Definitions.

The following words and phrases when used in this chapter shall have the meanings respectively ascribed to them in this section except in those instances where the context clearly indicates 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 but not limited to 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 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.

"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. Such improvements shall include, without limitation, 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.

§ 33.1-431. 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 fifty-one percent of either the land area or the assessed value of real property 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 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, the governing body shall deliver a copy of the petition and notice of the public hearing to the town council at least thirty 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 governing body at 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. 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 ten days shall intervene between the third publication and the date set for the hearing.

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, 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 twenty 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 (§ 10.1-2100 et seq.) or the regulations adopted pursuant thereto, (iii) as required to comply with the provisions of the federal Clean Water Act (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.

A resolution creating a district shall also provide that the district shall expire either (i) fifty years from the date upon which the resolution is passed or (ii) when the district is abolished in accordance with this chapter. After the public hearing, the 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 governing body. In the case where any signatures on the petition are withdrawn, the governing body may pass the proposed resolution only upon certification that the petition continues to meet the provisions of this section. After the governing body has adopted the resolution creating the district, the district shall be established and the name of the district shall be "The Transportation Improvement District."

§ 33.1-432. 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 foregoing, 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 members of the commission shall elect one of their number chairman of the commission. The chairman may be the chairman or presiding officer of the governing body. In addition, the members of 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.

§ 33.1-433. Powers and duties of commission.

The commission may:

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 ten 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, but not limited to, the financing, acquisition, construction, reconstruction, alteration, improvement, expansion, operation, 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 county or participating town to make payments for services of the district.

5. Accept the allocations, contributions, or funds of, or to reimburse from, any available source, including, but not limited to, any person for either 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 which, together with all other revenues, are required by the district to fulfill its annual obligations.

§ 33.1-434. District advisory boards.

Within thirty 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 above, 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 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 without limitation 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.

§ 33.1-435. Annual special improvements tax; use of revenues.

A. 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 forty cents 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 assessment shall be January 1 of the year following adoption of the resolution creating the district. 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.

§ 33.1-436. 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 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 sixty 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 1.1 (§ 33.1-23.01 et seq.) of Chapter 1 of Title 33.1, 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.

§ 33.1-437. 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 § 33.1-436 to a classification that is not subject to that tax, then 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 sixty 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 § 33.1-436 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.

§ 33.1-438. 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, nor 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 twenty years from the date on which such district is created.

§ 33.1-439. Allocation of funds to districts.

The governing body of any county or town council of any 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, without limitation, 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 1.1 (§ 33.1-23.01 et seq.) of Chapter 1 of Title 33.1, and subsection A of § 58.1-638, to the construction districts and localities in which such transportation district is located.

§ 33.1-440. 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.

§ 33.1-441. 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.

§ 33.1-442. 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, its agents, servants, or employees.

§ 33.1-443. 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 Commonwealth Transportation Commissioner may exercise the powers of condemnation provided in §§ 25-46.1 through 25-46.36, 33.1-89 through 33.1-132, or § 33.1-229, 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 system of state highways for purposes of maintenance and subsequent improvements as necessary. Upon acceptance by the Commonwealth of such highway into a system of highways, 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.

§ 33.1-444. 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 fifty-one percent of either the land area or the assessed value of real property of the district, and of at least fifty-one 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 § 33.1-431. Upon receipt of such a petition, the county shall use the standards and procedures provided in § 33.1-431, 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 § 33.1-431, 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.

§ 33.1-445. 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 fifty-one 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 § 33.1-431 *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 the abolition of the district (i) is in accordance with the locality's comprehensive plan for the development of the area; (ii) is in the best interests of the residents and owners of the property within the district; (iii) is in furtherance of the public health, safety, and welfare; (iv) that 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.

§ 33.1-446. 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.).

2. That the provisions of this act are severable, and if any provision of this act is held to be unconstitutional by any court of competent jurisdiction, then the remaining portions of this act shall be enforced in accordance the provisions of § 1-17.7.