

Virginia Department of Transportation

2001 Fiscal Impact Statement

1. **Bill Number** HB1650

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. **Patron** Armstrong

3. **Committee** Transportation

4. **Title** Drainage easements.

5. **Summary/Purpose:**

Drainage easements. Requires the Virginia Department of Transportation to maintain highway drainage easements, both on and off highway right-of-way.

6. Tentative Fiscal Impact Estimates are:

6a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2000-01	0		
2001-02	\$10,527,880	68	NGF
2002-03	\$10,527,880		

6b. Revenue Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2000-01			
2001-02			
2002-03			

7. Budget amendment necessary: No

8. Fiscal implications: Yes. VDOT is responsible to maintain roadway sections within the Commonwealth of Virginia's right-of-way. If this section was added to the Code, that is, requiring VDOT to be responsible for all drainage easements regardless of the right-of-way, the drainage responsibilities for VDOT would basically double and the resultant funding requirements for maintenance work on drainage would increase significantly.

9. All jurisdictional areas within the Commonwealth of Virginia.

10. Technical amendment necessary: No.

11. Other comments: Drainage easements serve as a channel for handling water that accumulates due to road surface runoff and natural drainage patterns. Drainage easements include paved and unpaved ditches, pipe and box culverts, catch basins, drop inlets, storm sewers, underground pipes, and other associated structures.

The Code of Virginia, Section 33.1-72.1(c), states that VDOT is only responsible to maintain highway sections within the state rights-of-way, which is either 30 feet or 40 feet on the secondary system. This statute specifies, "In either case such streets must have easements appurtenant thereto which conform to the policy of the Commonwealth Transportation Board with respect to drainage." This paragraph continues, "...if the local government requires street pavement widths other than those set forth in Virginia Department of Transportation 's Subdivision Street Requirements... any increase in the annual cost of maintenance attributable to such other pavement widths shall be paid to the Department by the local government."

VDOT's policy is that the Department shall be responsible for maintenance within the limits of the easements that fall within the state rights-of-way. As documented in VDOT's Maintenance Policy Manual, Number 5-1, "Work within the easement, but outside of the right-of-way, shall only be performed to mitigate problems within the right-of-way." The intent of this new legislation is to make VDOT responsible for all maintenance work along all drainage easements regardless of the state right-of-way. This is contrary to the Code and to VDOT policy. In addition, drainage easements generally result from the authorization of the local governing body to develop land and new subdivisions. Without the development of the land, there would not be a need for the street or the drainage easement. The resultant drainage within the easement and outside the state rights-of-way is beyond the responsibility of VDOT. It is a consequence of the local governing body's actions authorized under Title 15.2 of the Code and consistent with the almost exclusive rights of local road authorities under the Code, Section 33.1-229, dealing with the "continuance of powers of county authorities." This section states that local road authorities continue to have the powers vested to them on June 20, 1932, which includes the maintenance of drainage easements. It should not be the responsibility of VDOT to maintain private or local property or improvements beyond the state rights-of-way.

Many of the maintenance easements are located in urban areas or subdivisions where the access would require many hours of intensified, expensive, manual labor. Basically, the easements exist because of land development, which is located outside the VDOT right-of-way. In addition, citizens may request that they be maintained to a higher level of service because the drainage structures are located in urban areas or in subdivisions. This higher level of service is not needed for the general upkeep of VDOT drainage easements. Since these easements are a direct result of development in the counties, they should be maintained by the private developers or the counties.

In addition, the issue of liability for VDOT employees working off the state right-of-way or on dedicated easements could be significant.

In Fiscal Year 1998, VDOT spent \$2.5 million in drainage work cleaning and reshaping ditches and cleaning and repairing minor drainage structures. A drainage section needing work is typically 30 feet by 100 feet, requiring an environmental permit, a 5-man crew, a dump truck, a backhoe, and an 8-hour day. The total cost is estimated to be \$10,000, or \$100 per linear foot (LF). VDOT is currently responsible for approximately 6.8 million linear feet of outfall ditches within the state right-of-way. If this legislation is enacted, this outfall responsibility would most likely double for VDOT. If 1% of this additional drainage easement needed work, then costs to VDOT for maintenance would increase to \$6.8 million (68,000 L.F. times \$100/L.F.) for outfall work only. Additional funding would also be needed for maintenance of minor drainage structures such as pipes, culverts, and drop inlets outside the state rights-of-way.

Additional maintenance forces, estimated at 1-2 persons per residency or 68 employees, would need to be hired to inspect and maintain this additional drainage inventory beyond the right-of-way on a statewide basis. The typical job positions for this additional work would be maintenance crew leaders (pay band 3) at an average annual salary of \$34,000 plus overhead. This additional cost would exceed \$2,312,000 million (68 positions times \$34,000) plus overhead of \$1,415,880 = \$3,727,880. Hence, a conservative estimate for total costs would be \$6.8 million for additional operational expenses plus \$3,727,880 for additional personnel for a grand total of \$10,527,880.

This legislation would also significantly increase environmental permits and may affect Wetlands requirements.

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cc: Secretary of Transportation

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