

VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

CHAPTER 673

An Act to amend and reenact §§ 33.1-23.3, 33.1-41.1, and 33.1-44 of the Code of Virginia, relating to allocations for urban system highway construction, maintenance payments to cities and certain towns, and matching funds required of certain localities.

[S 251]

Approved April 6, 2002

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-23.3, 33.1-41.1, and 33.1-44 of the Code of Virginia are amended and reenacted as follows:

§ 33.1-23.3. Allocation of construction funds for urban highways.

A. Such funds as are allocated to urban highways in ~~municipalities having 3,500 or more inhabitants~~ (i) ~~all towns that have more than 3,500 inhabitants according to the last preceding United States Census,~~ (ii) ~~all towns which, according to evidence satisfactory to the Commonwealth Transportation Board, have attained a population of more than 3,500 since the last preceding United States census,~~ (iii) ~~all incorporated towns which, on June 30, 1985, maintained certain streets under § 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 2 of subsection B of § 33.1-23.1 and those incorporated towns which, on June 30, 1985, maintained certain streets under § 33.1-80, as then in effect,~~ shall be apportioned among the cities and towns of this Commonwealth by the Commonwealth Transportation 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. For the purposes of this section, the term "population" means either the population according to the latest United States census or the latest population estimate of the Center for Public Service, whichever is more recent. *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 above are hereby ratified, validated, and confirmed.*

B. No apportionment hereunder shall be made to any city or town which does not have an urban project or projects approved by the Commonwealth Transportation 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 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 any combination of (i), (ii), and (iii). Notwithstanding other provisions of this section, not more than one-third 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 Commonwealth Transportation 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 Commonwealth Transportation 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.

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 of land resulting from highway system 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) improvements to traffic flow and transportation system utilization, or a combination of (i), (ii), and (iii).

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 Commonwealth Transportation Board shall, subject to appropriation and allocation, set aside no more than one-third 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 Commonwealth Transportation Commissioner.

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

§ 33.1-41.1. Payments to cities and certain towns for maintenance of certain highways.

The Commonwealth Transportation Commissioner, subject to the approval of the Commonwealth Transportation Board, shall make payments for maintenance, construction, or reconstruction of highways, as hereinafter provided, to: (i) all incorporated towns having more than 3,500 inhabitants according to the last preceding United States census; (ii) all incorporated towns which, according to evidence satisfactory to the Commonwealth Transportation Board, have attained a population of more than 3,500 since the last preceding United States census; (iii) all incorporated towns which, on June 30, 1985, maintained certain streets under § 33.1-80 as then in effect; (iv) all cities operating under charters designating them as cities, regardless of their populations; and (v) the Town of Wise, the Town of Lebanon, and the Town of Blackstone all cities and towns eligible for allocation of construction funds for urban highways under § 33.1-23.3. 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 of Transportation. *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 by the Commissioner to any such city or town unless the portion of the highway for which such payment is made either (a) has (i) an unrestricted right-of-way at least fifty feet wide and (ii) a hard-surface width of at least thirty feet; or (b) has (i) an unrestricted right-of-way at least eighty feet wide, (ii) a hard-surface width of at least twenty-four feet, and (iii) approved engineering plans for the ultimate construction of an additional hard-surface width of at least twenty-four feet within the same right-of-way; or (c) (i) is a cul-de-sac, (ii) has an unrestricted right-of-way at least forty feet wide, and (iii) has a turnaround that meets applicable standards set by the Department of Transportation; or (d) either (i) has been paved and has constituted part of the primary or secondary system of state highways prior to annexation or incorporation or (ii) has constituted part of the secondary system of state highways prior to annexation or incorporation and is paved to a minimum width of sixteen feet subsequent to such annexation or incorporation and with the further exception of streets or portions thereof which have previously been maintained under the provisions of § 33.1-79 or § 33.1-82; or (e) was eligible for and receiving such payments under the laws of the Commonwealth in effect on June 30, 1985; or (f) is a street established prior to July 1, 1950, which has an unrestricted right-of-way width of not less than thirty feet and a hard-surface width of not less than sixteen feet; or (g) is a street functionally classified as a local street and constructed on or after January 1, 1996, which at the time of approval by the city or town met the criteria for pavement width and right-of-way of the then-current edition of the subdivision street requirements manual for secondary roads of the Department of Transportation (24 VAC 30-90-10 et seq.); (h) is a street previously eligible to receive street payments that is located in a city having a population of at least 200,000 but no more than 250,000 and is closed to public travel, pursuant to legislation enacted by the governing body of the city 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 (i) 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 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 local governing body and is to protect the quality of the affected local government'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 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: (i) principal and minor arterial roads

and (ii) collector roads and local streets. Payments to affected localities shall be based on the number of moving-lane-miles of highways or portions thereof available to peak-hour traffic in each category of highways in that locality. For the fiscal year 1986, payment to each city and town shall be an amount equal to \$7,787 per moving-lane-mile for principal and minor arterials and \$4,572 per moving-lane-mile for collector roads and local streets.

The Department of Transportation shall establish a statewide maintenance index of the unit costs for labor, equipment, and materials used on roads and bridges in the fiscal year 1986, and use changes in that index to calculate and put into effect annual changes in the base per-lane-mile rate payable under this section.

The fund allocated by the Board shall be paid in equal sums in each quarter of the fiscal year, and no payment shall be made without the approval of the Board.

The city or town receiving this fund shall make annual reports, in such form as the Board may prescribe, accounting for all expenditures and certifying that none of the money received has been expended for other than maintenance, construction or reconstruction of the streets. Such reports shall be included in the scope of the annual audit of each municipality conducted by independent certified public accountants.

§ 33.1-44. Matching highway funds; funding of urban system construction projects, generally.

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 Commonwealth Transportation Board shall contribute such matching funds. However, in the case of municipalities of 3,500 or more population *eligible for an allocation of construction funds for urban highways under § 33.1-23.3* and the Town of Wise, the Town of Lebanon, and the Town of ~~Blackstone~~ Altavista, the Board may contribute toward the cost of construction of any federal-aid highway or street project ninety-eight 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 of 3,500 or more population *eligible for an allocation of construction funds for urban highways under § 33.1-23.3* and the Town of Wise, the Town of Lebanon, and the Town of ~~Blackstone~~ Altavista, the Commonwealth Transportation 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 ninety-eight 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.

In the case of municipalities of less than 3,500 in population *that on June 30, 1985, maintained certain streets under § 33.1-80 as then in effect*, the Commonwealth Transportation 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 paragraph shall be in addition to any other contribution, and projects established in reference to municipalities of less than 3,500 in population 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.

The term "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.

If any municipality requesting such Commonwealth Transportation Board contribution subsequently decides to cancel such construction or improvement after the Board has initiated the project at the request of the municipality, such 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 shall have the authority to waive all or any portions of such reimbursement at its discretion.

For purposes of this section, on any construction or improvement project in any city having either a population of at least 130,000 but less than 150,000 or a population of at least 170,000 but less than 200,000 and funded in accordance with subdivision 2 of subsection B of § 33.1-23.1, the additional cost for placing aboveground utilities below ground may be paid from funds allocated for that project. The maximum cost due to this action shall not exceed five million dollars. Nothing contained herein 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.