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HOUSE BILL NO. 2037

Offered January 8, 2003

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A BILL to amend the Code of Virginia by adding in Title 33.1 a chapter numbered 10.2, consisting of sections numbered 33.1-391.6 through 33.1-391.9, relating to the Department of Rail and Public Transportation; Public-Private Transportation Act projects to redirect freight traffic from highways to railroads.

Patron—Marshall, R.G.

Referred to Committee on Transportation

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 10.2, consisting of sections numbered 33.1-391.6 through 33.1-391.9 as follows:

CHAPTER 10.2.

VIRGINIA MULTIMODAL PUBLIC-PRIVATE PARTNERSHIP ACT OF 2003.

§ 33.1-391.6. Assessment and quantification of public benefits.

The Department of Rail and Public Transportation may solicit or entertain proposals under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) for rail infrastructure enhancement projects that involve improvements to privately owned rail assets if such projects will result in substantial quantifiable benefits to the public. When, in response to such solicitation, the Department of Rail and Public Transportation receives 1 or more proposals that, in the Department of Rail and Public Transportation's view, would result in substantial quantifiable benefits to the public, it may either: (i) hire an outside, third party consultant, independent of the Department of Rail and Public Transportation, to undertake an analysis of the substantial quantifiable benefits to the public and benefits to the owner of the rail assets that would accrue if the proposal were accepted or (ii) conduct an in-house review and determination of the same, with an outside review of the Department of Rail and Public Transportation's conclusions. In either case, assessment of the substantial quantifiable benefits to the public should include consideration of (a) truck diversion, with associated cost avoidances (including on a net present value basis), (b) increased safety, (c) improved air quality, (d) improved transit and/or motorist mobility, (e) reduced congestion, and/or (f) improvement in conformity compliance.

§ 33.1-391.7. Assessment and quantification of overall project costs.

Before completing any comprehensive agreement to undertake any proposal received as provided in § 33.1-391.6, the Department of Rail and Public Transportation, in cooperation and collaboration with the owner of the affected rail assets, shall have reached agreement on the projected cost of the proposed improvements. No such project shall be undertaken unless the Department of Rail and Public Transportation and the owner of the rail assets concur on the projected cost, and such projected cost is documented. Outside third parties may be hired either by the Department of Rail and Public Transportation or the owner of the rail assets, jointly or individually, to assist in such cost projection.

§ 33.1-391.8. Power to agree after determination of public/private cost sharing.

If the Department of Rail and Public Transportation determines that the substantial quantifiable public benefits of any proposal received as provided in § 33.1-391.6 exceed the overall projected costs of the project, the Department of Rail and Public Transportation may execute a comprehensive agreement with the owner or owners of affected rail assets for construction of the project, based on full funding exclusively by publicly grounded financing means. However, no project shall be undertaken in the absence of concurrence by the owner or owners of the affected rail assets. Nothing in this chapter shall be construed to authorize any project that involves a transfer in ownership of any existing rail assets from a private owner to the Commonwealth or any of its political subdivisions, agencies, or instrumentalities.

If the Department of Rail and Public Transportation determines that the substantial quantifiable public benefits of any proposed project do not exceed the project's overall projected costs, the Department of Rail and Public Transportation shall request that party to generate a financing plan to outline how private moneys will be made available to fund the difference between the substantial quantifiable public benefits and the project costs. This step assumes that the return on investment to the party proposing the project or the owner of the rail assets exceeds this difference. The full substantial quantifiable public benefits cost shall be made available in the project mix. It is not the intention of this section that private entities be required to cover any portion of project costs attributable as a public benefit. The Department of Rail and Public Transportation shall undertake a financial capacity

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59 assessment of the financing plan of the party making the proposal, to ascertain that it is financially
60 feasible. This assessment may take the form of an assessment of the proposing entity's own financial
61 capacity or of the soundness of the financial backers of the proposal. If the proposing entity has a
62 credit rating of at least investment grade from a nationally recognized rating organization, the
63 proposing entity shall be treated as having the financial capacity to perform its portion of the proposal.

64 § 33.1-391.9. Mechanisms for funding.

65 A. Public Funding.

66 If the General Assembly provides by law for the creation of a State Infrastructure Bank, the
67 Department of Rail and Public Transportation shall establish a freight rail account within the
68 Commonwealth's State Infrastructure Bank. This account shall become a revolving account for eligible
69 projects under this chapter, and serve as a vehicle for (i) moving public moneys and (ii) accruing any
70 private moneys in these instances where relevant.

71 Funding options for public entities include:

72 1. Federal transportation or general fund moneys available and allocated to Virginia that might be
73 applicable, including but not limited to Congestion Mitigation/Air Quality funding available under the
74 federal Transportation Efficiency Act for the Twenty-First Century or its successor.

75 2. State moneys allocated to the Department of Transportation or the Department of Rail and Public
76 Transportation from the Transportation Trust Fund. Use of Department of Transportation funding would
77 be eligible given public benefit assessment that includes truck diversion, postponement of highway
78 maintenance or construction expenditures, conformity compliance, or other mobility or safety
79 enhancements that are quantifiable.

80 3. Funding sources identified in the foregoing provisions of this subsection may be used as the basis
81 for straight grant support or to buttress debt instruments.

82 4. Projects undertaken under this chapter may be addressed through transportation bonds and other
83 debt instruments supported by the full faith and credit of the Commonwealth within the confines of the
84 Commonwealth's debt capacity.

85 5. The Department of Rail and Public Transportation may provide loans or loan guarantees to the
86 owner or owners of private rail assets subject to this chapter, which loans shall be repaid, for the
87 purpose of financing the proposing party's share of total project costs. Such loans shall be subject to
88 interest at a rate mutually agreeable to the parties. Making of interest-free loans may be made for
89 projects under this chapter, provided the net present value of the waived interest shall be included as a
90 share of the Department of Rail and Public Transportation's contribution toward the public benefit
91 component of project funding.

92 B. Private funding.

93 Private entities may be allowed to pursue various funding options for the difference between the
94 value of public benefits and total project costs. In no instance shall the owner of privately owned rail
95 assets be compelled to pursue a project that it chooses not to pursue.

96 Funding options for private entities include:

97 1. Direct capital expenditure, including issuance of investment tax credits for new assets or for
98 improvements to existing assets and accelerated depreciation or bonus depreciation for rail assets,
99 including locomotives and rolling stock. Qualifying assets include, but are not limited to, infrastructure
100 and equipment investment for intermodal or enhanced carload freight service.

101 2. Use of a direct loan or loans from the Department of Rail and Public Transportation or a
102 commercial loan with the Department of Rail and Public Transportation's guarantee attached. In such
103 loan scenarios, loan securitization may take the form of a use charge on incremental rail traffic
104 benefiting from an enhanced asset. With the affected rail carrier's concurrence, the Department of Rail
105 and Public Transportation may apply a per-railcar fee or use charge as the revenue stream supporting
106 a loan or a portion of such loan.

107 3. Tax-exempt financing, if feasible, to allow rail carriers to obtain debt financing at a lower cost
108 when the proceeds are used for infrastructure or equipment investments on qualifying projects under this
109 chapter. If interest payments are nontaxable, the rail carrier shall pay a lower interest rate. Bond
110 holders may be provided with direct tax credits.

111 4. Commuter and intercity passenger rail income exclusion. Under this chapter, freight railroads may
112 use payments received from commuter and intercity passenger railroads using their tracks to secure
113 financing for eligible projects under this chapter. Such payments from commuter and intercity railroads
114 would be excluded from taxable income of the freight railroad.