

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 792

An Act to amend and reenact §§ 33.1-430, 33.1-431, 33.1-433, and 33.1-435 of the Code of Virginia, relating to local transportation improvement districts in counties having populations greater than 500,000.

[H 502]

Approved April 14, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-430, 33.1-431, 33.1-433, and 33.1-435 of the Code of Virginia are amended and reenacted as follows:

§ 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 *improvement* 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 *transportation improvement* district created pursuant to this chapter.

"District advisory board" or "advisory board" means the board appointed pursuant to ~~this chapter~~ § 33.1-434.

"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~~ 51 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, ~~and (iii) would be subject to the annual special improvement tax authorized by § 33.1-435 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, ~~the governing body shall deliver~~ a copy of the petition and notice of the public hearing ~~shall be delivered~~ to the town council at least ~~thirty~~ 30 days prior to the public hearing, and the town council may by resolution determine if ~~it the town council wishes~~ such any property located within the town to be included within the proposed district and ~~shall deliver a copy of~~ any such resolution ~~shall be delivered~~ to the governing body ~~at 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 the third sentence of subsection D 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 ~~ten~~ 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, which shall be reasonably consistent with the petition, ~~creating the district and providing that would create the district upon final adoption and that would provide 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. 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 ~~twenty~~ 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 (§ 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~~ 50 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 may~~

adopt a proposed resolution creating the district. 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, 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 § 33.1-435, 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 pass readopt the proposed resolution only upon certification that 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 adopted readopted the resolution creating the district, the district shall be established and the name of the district shall be "The..... Transportation Improvement District."

§ 33.1-433. 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, 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 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, but not limited to, 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, 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.*

§ 33.1-435. 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 ~~forty~~ ~~cents~~ \$.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 ~~assessment~~ *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.