

# VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

## CHAPTER 966

*An Act to amend the Code of Virginia by adding in Title 33.1 a chapter numbered 16, consisting of sections numbered 33.1-447 through 33.1-463, relating to creation of a local transportation district within the City of Charlottesville and Albemarle County.*

[H 1419]

Approved April 15, 2004

**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 16, consisting of sections numbered 33.1-447 through 33.1-463, as follows:**

### *CHAPTER 16.*

### *TRANSPORTATION DISTRICT WITHIN THE CITY OF CHARLOTTESVILLE AND COUNTY OF ALBEMARLE.*

#### *§ 33.1-447. Definitions.*

*As used in this chapter, unless the context requires a different meaning:*

*"Commission" means the governing body of the 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 placing them in operation; and*

*12. Expenses incurred in connection with the creation of the district, not to exceed \$150,000.*

*"District" means the 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.*

*"Locality" means the city of Charlottesville and the County of Albemarle.*

*"Owner" or "landowner" means the person who has the usufruct, control, or occupation of the taxable real property as determined, pursuant to § 58.1-3281, by the commissioner of the revenue of the locality in which the subject real property is located.*

*"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 in constructing or improving any 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 highways and all buildings, structures, approaches, and facilities thereof and appurtenances thereto, rights-of-way, bridges, tunnels, and all related equipment and fixtures.*

#### *§ 33.1-448. Creation of district.*

*A. A district may be created in the City of Charlottesville and the County of Albemarle by resolutions of such localities' local governing bodies. Such resolutions shall be considered upon the petition, to each local governing body of the locality in which the proposed district is to be located, of*

*the owners of at least 51 percent of either the land area or the assessed value of land, in each locality, which (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.*

*B. The petition to the local governing bodies 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 which 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 local governing bodies to establish the proposed district for the purposes set forth in the petition.*

*C. Upon the filing of such a petition, each local 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. Such resolution shall be binding upon the local 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 10 days shall intervene between the third publication and the date set for the hearing.*

*D. If both local governing bodies find the creation of the proposed district would be in furtherance of their comprehensive plans 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, both local governing bodies may pass resolutions, 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 resolutions shall provide a description with specific terms and conditions of all commercial and industrial zoning classifications which shall be in force in the district upon its creation, together with any related criteria and a term of years, not to exceed 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 or (ii) as specifically required to comply with state or federal law.*

*Each resolution creating the district shall also provide that the district shall expire either (i) 35 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, each local 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 local governing body. In the case where any signatures on the petition are withdrawn, the local governing body may pass the proposed resolution only upon certification that the petition continues to meet the provisions of this section. After both local governing bodies have adopted resolutions creating the district, the district shall be established and the name of the district shall be "The Charlottesville-Albemarle Transportation Improvement District."*

*§ 33.1-449. Commission to exercise powers of the district.*

*The powers of the district created pursuant to this chapter shall be exercised by a commission. The commission shall consist of two members of the governing body of both localities in which the district is located, appointed by their respective local governing bodies. In addition to the foregoing, the Chairman of the Commonwealth Transportation Board or his designee shall be a member of the commission of the 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 a local 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 any local governing body 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.*

*§ 33.1-450. Creation of district advisory board.*

*Within 30 days after the creation of the district, a district advisory board shall be appointed for the district created pursuant to this chapter.*

*§ 33.1-451. Appointment of district advisory board.*

Within 30 days after the establishment of the district under this chapter, the local governing body from each locality within which any portion of the district is located shall appoint six members to a district advisory board. Three of the six members from each locality shall be chosen by the local governing body from nominations submitted to the local governing body by the petitioners. All members shall own or represent commercially or industrially zoned land within the district. 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 local governing body, or any successor of such a member, the local governing body shall appoint a new member who is a representative or owner of commercially or industrially zoned property within the local district. 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 their successors, shall nominate a new member for selection by the local governing body.

District advisory board members shall serve without pay, but the local 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 local governing body of the locality concerning taxes to be levied pursuant to this chapter.

*§ 33.1-452. Powers and duties of commission.*

*The commission shall:*

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 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. Invite bids or request proposals from and contract with any person, as authorized by law, 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, 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 locality 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 of any transportation improvements in the district.
6. Contract for the extension and use of any 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 that, together with all other

revenues, are required by the district to fulfill its annual obligations.

*§ 33.1-453. Annual special improvements tax; use of revenues.*

Upon the written request of the commission made concurrently to the local governing body or bodies pursuant to this chapter, each local 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. 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 when combined with all other special taxes in the Code of any kind imposed on land within the district, shall not be more than \$.25 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 locality'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 each locality pursuant to such taxes shall be paid to or at the direction of the district commission for its use pursuant to this chapter.

*§ 33.1-454. Agreements with Commonwealth Transportation Board; payment of special improvements tax to Transportation Trust Fund.*

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 each local governing body creating the district that the locality's officer charged with the responsibility for preparing the locality'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 60 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 this title, 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.

While nothing in this chapter shall limit the authority of any locality 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 local 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 such county or counties in which such project is located, shall be reduced by the amount of such deficit and used to satisfy the deficit.

*§ 33.1-455. 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; 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 locality, town, or its governing body from imposing and collecting taxes or assessments for public improvements as permitted by law. Any locality that creates a district pursuant to this chapter 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 20 years from the date on which such district is created.

*§ 33.1-456. Allocation of funds to districts.*

The local governing body of either locality 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 this title, and subsection A of § 58.1-638 to the construction districts and localities in which such transportation district is located.

§ 33.1-457. Reimbursement for advances to district.

To the extent that a locality or town has made advances to the district, the commission shall direct the district treasurer to reimburse the locality or town from any district funds not otherwise specifically allocated or obligated.

§ 33.1-458. Cooperation between districts and other political subdivisions.

Any district created pursuant to this chapter may enter into agreements with counties, cities, towns, or other political subdivisions of the Commonwealth for joint or cooperative action in accordance with the authority contained in § 15.2-1300.

§ 33.1-459. Tort liability.

No pecuniary liability of any kind shall be imposed upon the Commonwealth or any locality, 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.

§ 33.1-460. Approval by Commonwealth Transportation Board.

The district may not construct or improve a transportation improvement without the approval of both the Commonwealth Transportation Board and the locality in which the transportation improvement will be located. At the request of the commission, the Commonwealth Transportation Commissioner may exercise the powers of condemnation provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, §§ 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.

§ 33.1-461. Enlargement of district.

The district shall be enlarged by resolution of the local governing body of the locality upon the petitions of the district commission and the owners of at least 51 percent of either the land area or assessed value of land of the district within each locality, and of at least 51 percent of either the land area or assessed value of land 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 § 33.1-410. Upon receipt of such a petition, the locality shall use the standards and procedures provided in § 33.1-410, 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 local governing body finds the enlargement of a local district would be in accordance with the applicable comprehensive plan and transportation improvement program 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 local 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 of a locality may pass a resolution providing for the enlargement of the district.

§ 33.1-462. Abolition of local transportation districts.

A. Any district created pursuant to this chapter may be abolished by resolutions passed by each local governing body within whose locality any portion of the district lies, upon the joint petition of the commission and the owners of at least 51 percent of the land area located within the district in each locality. 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 each affected local governing body to abolish the district.

B. Upon receipt of such a petition, each local governing body, in considering the abolition of the district, shall use the standards and procedures described in § 33.1-410 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 each local governing body finds that the abolition of the district (i) is in accordance with the applicable 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; and (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 each local governing body with the approval of the voters of each locality has agreed to assume the debts of the district, then each local governing body may pass a resolution 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 locality in which the district or portion thereof was located.*

*§ 33.1-463. Chapter to constitute complete authority for acts authorized; liberal construction.*

*This chapter shall constitute complete authority for the district to take the actions authorized in 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 may be determined pursuant to Article 6 (§ 15.2-2650 et seq.) of Chapter 26 of Title 15.2.*