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SENATE BILL NO. 257

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact §§ 33.1-72.1 and 33.1-75.1 of the Code of Virginia, relating to taking certain streets into state secondary highway system.

Patrons—Hawkins; Delegate: Marshall, D.W.

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:**1. That §§ 33.1-72.1 and 33.1-75.1 of the Code of Virginia are amended and reenacted as follows:**

§ 33.1-72.1. Taking certain streets into secondary system.

A. "Street," as used in this section, means a street or highway shown on a plat which was recorded or otherwise opened to public use prior to July 1, 1990 2010, at which time it was open to and used by motor vehicles, and which, for any reason, has not been taken into the secondary system of state highways and serves at least three families per mile.

B. "County," as used in this section, means a county in which the secondary system of the state highways is constructed and maintained by the Department of Transportation and which has adopted a local ordinance for control of the development of subdivision streets to the necessary standards for acceptance into the secondary system.

C. Whenever the governing body of a county recommends in writing to the Department of Transportation that any street in the county be taken into and become a part of the secondary system of the state highways in such county, the Department of Transportation thereupon, within the limit of available funds and the mileage available in such county for the inclusion of roads and streets in the secondary system, shall take such street into the secondary system of state highways for maintenance, improvement, construction and reconstruction if such street, at the time of such recommendation, either: (i) has a minimum dedicated width of forty feet or (ii) in the event of extenuating circumstances as determined by the Commonwealth Transportation Commissioner, such street has a minimum dedicated width of thirty feet at the time of such recommendation. In either case such streets must have easements appurtenant thereto which conform to the policy of the Commonwealth Transportation Board with respect to drainage. After the streets are taken into the secondary system of state highways, the Department shall maintain the same in the manner provided by law. For streets whose plans are submitted on or after July 1, 1998, if the local government requires street pavement widths other than those set forth in the Virginia Department of Transportation's Subdivision Street Requirements (24 VAC 30-90-10 et seq. of the Virginia Administrative Code), any increase in the annual cost of maintenance attributable to such other pavement widths shall be paid to the Department by the local government. Such street shall only be taken into the secondary system of state highways if the governing body of the county agrees to contribute from county revenue or the special assessment of the landowners on the street in question one-half of the cost to bring the streets up to the necessary minimum standards for acceptance. No such special assessment of landowners on such streets shall be made unless the governing body of the county receives written declarations from the owners of seventy-five percent or more of the platted parcels of land abutting upon such street stating their acquiescence in such assessments. The basis for such special assessments, at the option of the local governing body, shall be either (i) the proportion the value of each abutting parcel bears to total value of all abutting parcels on such street as determined by the current evaluation of the property for real estate tax purposes, or (ii) the proportion the abutting road front footage of each parcel abutting the street bears to the total abutting road front footage of all parcels abutting on the street, or (iii) an equal amount for each parcel abutting on such street. No such special assessment on any parcel shall exceed one-third of the current evaluation of such property for real estate tax purposes. Such streets are eligible under this provision only if neither the original developer, developers, nor successor developers retain a speculative interest in property abutting such streets. For the purpose of this section, ownership or partnership in two or more parcels, or equivalent frontage, abutting such streets shall constitute speculative interest. Special assessments under this section shall be conducted in the manner provided in Article 2 (§ 15.2-2404 et seq.) of Chapter 24 of Title 15.2, mutatis mutandis, for assessments for local improvements.

D. Whenever the governing body of a county recommends in writing to the Department of Transportation that any street in the county be taken into the secondary system of state highways as a rural addition to the secondary system in such county, the Department of Transportation thereupon shall, within the limitation of funds and the mileage limitation of the Commonwealth Transportation Board's

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59 policy on rural additions, take such street into the secondary system of state highways as a rural addition
60 thereto for maintenance, improvement, construction, and reconstruction. Any street added to the
61 secondary system under this provision shall be constructed to the Department's standards for the traffic
62 served. Such streets are eligible under this provision only if neither the original developer, developers,
63 nor successor developers retain a speculative interest, as herein defined, in property abutting such streets.
64 The local governing body of any county may use revenues derived from the sale of bonds to finance the
65 construction of rural additions to the secondary system of such county. In addition, from the funds
66 allocated by the Commonwealth for the construction of secondary road improvements, such governing
67 body may use funds allocated within the Commonwealth Transportation Board policy for the
68 construction of rural additions to pay principal and interest on bonds associated with rural additions in
69 such county, provided the revenue derived from the sale of such bonds is not used as the county
70 matching contribution under § 33.1-75.1. The provisions of this section shall not constitute a debt or
71 obligation of the Commonwealth Transportation Board or the Commonwealth of Virginia.

72 E. In instances where it is determined that speculative interest is retained by the original developer,
73 developers, or successor developers and the governing body of the county deems that extenuating
74 circumstances exist, the governing body of the county shall require a pro rata participation by such
75 original developer, developers or successor developers as a condition of the county's recommendation
76 pursuant to this section. The basis for the pro rata percentage required of such developer, developers, or
77 successor developers shall be the proportion that the value of the abutting parcels owned or partly
78 owned by the developer, developers, or successor developers bears to the total value of all abutting
79 property as determined by the current evaluation of the property for real estate purposes. The pro rata
80 percentage shall be applied to the Department of Transportation's total estimated cost to construct such
81 street to the necessary minimum standards for acceptance to determine the amount of costs to be borne
82 by the developer, developers, or successor developers. Property so evaluated shall not be assessed in the
83 special assessment for the determination of the individual pro rata share attributable to other properties.
84 Further, when such pro rata participation is accepted by the governing body of the county from such
85 original developer, developers, or successor developers, such amount shall be deducted from the
86 Department of Transportation's total estimated cost and the remainder of such estimated cost shall then
87 be the basis of determining the assessment under the special assessment provision or determining the
88 amount to be provided by the county when funded from general county revenue under subsection C of
89 this section or determining the amount to be funded as a rural addition under subsection D of this
90 section.

91 F. Acceptance of any street into the secondary system of state highways for maintenance,
92 improvement, construction, and reconstruction shall not impose any obligation on the Board to acquire
93 any additional right-of-way or easements should they be necessary by virtue of faulty construction or
94 design.

95 G. The local governing body of the county may expend general county revenue for the purposes of
96 this section.

97 H. The local governing body of the county may permit one or more of the landowners on the street
98 in question to pay to the county a sum equal to one-half of the cost to bring the street up to the
99 necessary minimum standards for acceptance into the secondary system of state highways, which funds
100 the county shall then utilize for such purpose. Thereafter, upon collection of the special assessment of
101 landowners on such street, the county shall use such special assessment funds to reimburse, without
102 interest, the one or more landowners for those funds which they previously advanced to the county to
103 bring the street up to the necessary minimum standards for acceptance.

104 I. Any funds allocated for use within any county for the purpose of adding to the secondary system
105 of highways, if not used by such county for such purpose during the fiscal year they are so allocated,
106 may be held for such purpose for the three succeeding fiscal years.

107 § 33.1-75.1. Special revenue sharing funds for systems in certain counties.

108 A. From, and as a first priority of, annual allocations of state funds for the maintenance,
109 improvement, construction, or reconstruction of the systems of state highways, the Commonwealth
110 Transportation Board shall make an equivalent matching allocation to any county for designations by the
111 governing body of up to \$500,000 in county general funds for use by the Commonwealth Transportation
112 Board to construct, maintain or improve the primary and secondary highway systems within such
113 county. Such funds allocated by the Commonwealth Transportation Board and such county funds shall
114 be placed in special fund accounts of the Board and county, respectively, both to be known as the ". . .
115 . . . County primary and secondary road fund," and shall be used solely for the purposes of either (i)
116 maintaining, improving or constructing the primary and secondary highway systems within such county,
117 or (ii) bringing subdivision streets, used as such prior to July 1, 1990 2010, up to standards sufficient to
118 qualify them for inclusion in the state primary and secondary system of highways. After due
119 consultation and exchange of recommendations with the Board, the governing body of such county shall
120 determine what portion of such funds shall be used for construction, and what portion for maintenance

121 or improvement, of primary and secondary roads in such county. That portion so designated by the
122 governing body for construction shall be allocated to specific projects by the Board; that portion
123 designated by the governing body for maintenance or improvement shall be allocated to specific roads
124 by the governing body. The county shall pay over to the Board that amount of its special fund account
125 needed for a project upon notice by the Board of its intent to proceed with the project. Projects
126 identified by the board of supervisors for construction with county general funds as provided in this
127 section need not be included in the county's six-year plan.

128 B. Upon indication by the resident engineer of a county that a project or projects funded pursuant to
129 subsection A of this section cannot be implemented by the Department of Transportation within the
130 fiscal year for which such revenue sharing funds have been allocated, the Department may contract with
131 the county for the implementation of the project or projects by the county. Such contract may cover
132 either a single project or may provide for the county's implementation of several projects during the
133 fiscal year. Upon approval by the Department, the county may expend from its special fund created
134 under subsection A of this section funds to undertake the implementation of a particular project or
135 projects. The county will undertake implementation of the particular project or projects by obtaining the
136 necessary permits from the Department of Transportation in order to ensure that the improvement is
137 consistent with the Department's standards for such improvements.

138 C. Total state funds allocated statewide under this section shall not exceed \$10 million in any one
139 fiscal year.

140 D. Notwithstanding the limitations specified in subsection A of this section, one month prior to the
141 end of any fiscal year in which less than \$10 million has been allocated from state funds under this
142 section, those counties requesting more than \$500,000 may be allowed an additional allocation. The
143 difference between the amount first allocated and \$10 million shall be allocated at the discretion of the
144 Commonwealth Transportation Board among the counties receiving the maximum allocation under
145 subsection A of this section.