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SENATE BILL NO. 413

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance)

(Patron Prior to Substitute—Senator Edwards)

Senate Amendments in [] — February 17, 2004

A BILL to amend and reenact § 2.2-2101 of the Code of Virginia, as it is currently effective and as it shall become effective, and 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 33.1-391.10, and to repeal Chapter 1041 of the Acts of Assembly of 2003, relating to the Rail Transportation Development Authority.

Whereas, the General Assembly has determined that the transportation of freight and passengers by rail frequently provides a less expensive, safer, and more environmentally friendly alternative to the construction of additional highways; and

Whereas, hundreds of miles of railroads in the Commonwealth have been abandoned and dismantled within the past 50 years, and hundreds of additional miles of railroad tracks are currently in poor repair, are poorly utilized, and are threatened with abandonment; and

Whereas, improvements and repairs to rail equipment and infrastructure can, in many circumstances, reduce or eliminate the cost to the public of highway construction, and can also reduce accidents, traffic congestion, fuel consumption, and air and water pollution; and

Whereas, the railroad companies that own most of the railroad infrastructure in the Commonwealth do not have the financial ability to make all of the repairs and improvements to rail infrastructure that may be in the public interest; and

Whereas, there is a clear public need to provide a mechanism for identifying improvements and repairs to the Commonwealth's rail infrastructure that are clearly in the public interest, and in assisting in the financing of such repairs; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-2101 of the Code of Virginia, as it is currently effective and as it shall become effective, is amended and reenacted, and 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 33.1-391.10, as follows:

§ 2.2-2101. (Effective until July 1, 2008) Prohibition against service by legislators on boards, commissions, and councils within the executive branch; exceptions.

Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils within the executive branch of state government who are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board, commission, or council in the executive branch of state government that is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position.

The provisions of this section shall not apply to members of *the Rail Transportation Development Authority appointed as provided in § 33.1-391.8*, the Board for Branch Pilots, who shall be appointed as provided for in § 54.1-901; to members of the Council on Indians, who shall be appointed as provided for in § 2.2-2628; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.3; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in § 2.2-5204; to members of the Advisory Council on the Virginia Business-Education Partnership Program, who shall be appointed as provided in § 2.2-2600; to members of the Board of Veterans Services, who shall be appointed as provided for in § 2.2-2452; to members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § 23-231.15; to members of the Commonwealth Competition Commission, who shall be appointed as provided for in § 2.2-2621; to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in § 2.2-2423; to members of the Advisory Commission on the Virginia Schools for the Deaf and the Blind, who shall be appointed as provided for in § 22.1-346.1; to members of the Substance Abuse Services Council, who shall be appointed as provided for in § 37.1-207; to members of the Criminal Justice Services Board, who shall be appointed as provided in § 9.1-108; to members of the Council on Virginia's Future, who shall be appointed as provided in § 2.2-2685; or to members of the Virginia Workforce Council, who shall be appointed as provided for in § 2.2-2669.

§ 2.2-2101. (Effective July 1, 2008) Prohibition against service by legislators on boards,

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The provisions of this section shall not apply to members of the Rail Transportation Development Authority appointed as provided in § 33.1-391.8, the Board for Branch Pilots, who shall be appointed as provided for in § 54.1-901; to members of the Council on Indians, who shall be appointed as provided for in § 2.2-2628; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.3; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in § 2.2-5204; to members of the Advisory Council on the Virginia Business-Education Partnership Program, who shall be appointed as provided in § 2.2-2600; to members of the Board of Veterans Services, who shall be appointed as provided for in § 2.2-2452; to members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § 23-231.15; to members of the Commonwealth Competition Commission, who shall be appointed as provided for in § 2.2-2621; to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in § 2.2-2423; to members of the Advisory Commission on the Virginia Schools for the Deaf and the Blind, who shall be appointed as provided for in § 22.1-346.1; to members of the Substance Abuse Services Council, who shall be appointed as provided for in § 37.1-207; to members of the Criminal Justice Services Board, who shall be appointed as provided in § 9.1-108; or to members of the Virginia Workforce Council, who shall be appointed as provided for in § 2.2-2669.

CHAPTER 10.2.

RAIL TRANSPORTATION DEVELOPMENT AUTHORITY.

§ 33.1-391.6. Short title.

This chapter shall be known and may be cited as the Rail Transportation Development Authority Act.

§ 33.1-391.7. Authority created; purpose.

There is hereby created a body corporate and a political subdivision of the Commonwealth to be known as the Rail Transportation Development Authority, hereinafter in this chapter known as "the Authority." The Authority shall have the responsibility of identifying needed construction, reconstruction, improvements, repairs, extensions, additions, restorations, and any related acquisitions of real or personal property, of or to rails, tracks, rights-of-way, shops, terminals, bridges, tunnels, rolling stock, signals, and any other equipment, infrastructure, or facilities that are or may be used to provide for the transportation of freight or passengers by rail in the Commonwealth that the Authority determines to be in the public interest, hereinafter referred to as a rail transportation project. In addition to its other powers hereinafter set forth, the Authority shall have the power to finance or assist in financing, from the resources made available to it, any such rail transportation project.

§ 33.1-391.8. Composition of Authority; chairman and vice chairman; quorum; administrative support services.

[The Authority shall consist of 11 members. Each member shall serve for a term of four years and may be reappointed for one additional term. The Governor shall make five appointments. The other six members of the Authority shall be as follows: one member of the Authority shall be selected by Virginians for High Speed Rail; one member of the Authority shall be selected by the Committee to Advance the TransDominion Express of the Central Virginia Foundation for Economic Education and Improvement, Inc.; one member of the Authority shall be selected by Norfolk Southern Corporation; one member of the Authority shall be selected by CSX Corporation; one member of the Authority shall be selected by the Virginia Municipal League; and one member of the Authority shall be selected by the Virginia Association of Counties. All initial appointments shall be made by September 1, 2004.

All terms shall begin September 1, except for a member appointed to fill a vacancy occurring prior to the expiration of a term. The appointment to fill a vacancy occurring prior to the expiration of a term shall be for the unexpired term. Vacancies shall be filled by whoever shall have appointed the vacating member, whether the vacancy occurs at the end of a member's term or prior thereto.

The Authority shall annually elect from its membership a chairman and vice chairman, who shall continue to hold such office until their respective successors are elected. Six members of the authority shall constitute a quorum. The Authority shall consist of nine voting members appointed by the Governor, subject to confirmation by the General Assembly, who shall serve for terms of four years and may be reappointed for one additional term. Two members shall represent passenger rail interests in the Commonwealth including high-speed rail, inner-city passenger rail and commuter rail, and Virginia

Railway Express. One member shall represent Class I railroad interests in the Commonwealth, and one member shall represent short line railroad interests in the Commonwealth.

For the initial appointments only, four of the appointments may be for terms of two years so as to allow for staggered terms. Such initial two-year terms shall not count against the term limitation. Vacancies shall be filled by gubernatorial appointment for any unexpired term.

The Authority shall annually elect from its membership a chairman and vice chairman, who shall continue to hold such office until their respective successors are elected. Five members of the authority shall constitute a quorum.]

The members of the Authority shall be reimbursed their actual and necessary expenses incurred in carrying out their duties and, in addition, shall be paid the same per diem as provided in the general appropriation act for members of the General Assembly engaged in legislative business between sessions.

The Virginia Department of Rail and Public Transportation shall provide administrative support services for the Authority.

§ 33.1-391.9. Powers of Authority.

The Authority shall have the following powers together with all powers incidental thereto or necessary for the performance of those hereinafter stated:

1. To sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties;

2. To adopt and use a corporate seal and to alter the same at pleasure;

3. To procure insurance, participate in insurance plans, and provide self-insurance; however, the purchase of insurance, participation in an insurance plan, or the creation of a self-insurance plan by the Authority shall not be deemed a waiver or relinquishment of any sovereign immunity to which the Authority or its officers, directors, employees, or agents are otherwise entitled;

4. To establish bylaws and make all rules and regulations, not inconsistent with the provisions of this chapter, deemed expedient for the management of the Authority's affairs;

5. To apply for and accept money, materials, contributions, grants, or other financial assistance from the United States and agencies or instrumentalities thereof, the Commonwealth, or any political subdivision, agency, or instrumentality of the Commonwealth;

6. To issue, in accordance with applicable law, bonds and other evidences of debt, which shall not be secured by the full faith and credit of the Commonwealth and shall not constitute tax-supported debt of the Commonwealth, in order to finance or assist in the financing of rail transportation projects undertaken under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or any other rail transportation project in the Commonwealth determined by the Authority to be in the public interest;

7. To make loans or grants for purposes that are consistent with this chapter and otherwise to receive and expend moneys on behalf of the Authority;

8. To acquire real and personal property or any interest therein by purchase, lease, gift, or otherwise, and to hold, encumber, sell, or otherwise dispose of such land or interest, for purposes consistent with this chapter;

9. To construct or acquire, by purchase, lease, contract, or otherwise, rail transportation facilities;

10. To enter into agreements or leases with public or private entities for the operation of rail transportation facilities it has acquired;

11. To make and execute contracts and all other instruments and agreements necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter;

12. To the extent funds are made available to the Authority to do so, to employ employees, agents, advisors, and consultants through the Department of Rail and Public Transportation, including without limitation, attorneys, financial advisers, engineers, and other technical advisers and, the provisions of any other law to the contrary notwithstanding, to determine their duties and compensation;

13. To establish and collect fees, charges or other revenue for the use of the property, equipment, or facilities of the Authority, and to pledge such fees, charges or other revenues to service debt authorized under this Act; and

14. To the extent not inconsistent with other provisions of this chapter, and without limiting or restricting the powers otherwise given the Authority, to exercise all the powers given to transportation district commissions by § 15.2-4518.

No provision of this chapter shall be construed as authorizing the Authority to impose fees, financial obligations, or mandates of any kind on any common carrier freight railroad without the express consent of the common carrier railroad.

§ 33.1-391.10. Rail Transportation Plan.

The Virginia Department of Rail and Public Transportation, in conjunction with the Authority, shall develop, publish, advocate and periodically revise a rail transportation plan for the Commonwealth. Such plan shall include both freight and passenger components. Such plan shall, to the extent feasible,

183 *be developed and coordinated with the agency charged with rail planning in each of the states adjacent*
184 *to the Commonwealth.*

185 **2. That the powers conferred upon the Rail Transportation Development Authority under**
186 **subdivisions 6, 8, 9, 13, and 14 pursuant to the provisions of this act shall not become effective**
187 **earlier than July 1, 2007. In addition, such powers shall only become effective beginning July 1,**
188 **2007, if (i) the Authority prepares a comprehensive statewide plan providing specific details for the**
189 **acquisition, construction, reconstruction, improvements, repairs, extensions, additions, or**
190 **restorations of rail transportation projects; (ii) such plan includes a specific proposal for the**
191 **financing of each rail transportation project included in the plan; and (iii) such comprehensive**
192 **statewide plan (or as such plan may be amended by the General Assembly) that provides for the**
193 **Rail Transportation Development Authority to acquire, construct, reconstruct, improve, repair,**
194 **extend, add to, or restore rail transportation projects becomes law prior to or on July 1, 2007. If**
195 **the powers conferred under subdivisions 6, 8, 9, 13, and 14 become effective, the Authority shall**
196 **not issue bonds or any other evidences of debt or borrow any funds for the acquisition,**
197 **construction, reconstruction, improvement, repair, extension, addition, or restoration of any rail**
198 **transportation project unless the project and the financing thereof is passed by the General**
199 **Assembly and enacted into law by the Governor.**

200 **3. That Chapter 1041 of the Acts of Assembly of 2003 is repealed.**