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## HOUSE BILL NO. 2403

Offered January 12, 2005

Prefiled January 12, 2005

A BILL to amend and reenact §§ 33.1-426 through 33.1-429 of the Code of Virginia, and to amend the Code of Virginia by adding in Chapter 14 of Title 33.1 sections numbered 33.1-430 through 33.1-434, relating to authorizing the Virginia Coalfield Coalition Authority to issue bonds in a principal amount not exceeding \$300,000,000 for financing of the Virginia Coalfield Expressway Corridor Program.

Patron—Phillips

Referred to Committee on Appropriations

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 33.1-426 through 33.1-429 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 14 of Title 33.1 sections numbered 33.1-430 through 33.1-434 as follows:**

§ 33.1-426. Virginia Coalfield Coalition Authority created.

The Virginia Coalfield Coalition Authority, hereinafter referred to as "the Authority," is created as a body corporate and as a political subdivision of the Commonwealth. The Authority is hereby constituted a public instrumentality exercising public and essential governmental functions, and the exercise by the Authority of the powers conferred by this chapter shall be deemed and held to be the performance of an essential governmental function of the Commonwealth. *Upon dissolution of the Authority, all its assets shall become property of the Commonwealth or as otherwise provided by law.*

§ 33.1-427. Board of Commissioners; membership; terms; compensation and expenses; chairman and vice-chairman; quorum; employees, agents, etc.

All powers, rights and duties conferred by this chapter or other provisions of law upon the Authority shall be exercised by the Board of Commissioners of the Virginia Coalfield Coalition Authority. The Board of Commissioners, hereafter referred to as "the Board," shall consist of ~~eleven~~ 11 members as follows: the State Treasurer; the Chairman of the Commonwealth Transportation Board; two members each of the local governing bodies of the Counties of Wise, Buchanan, and Dickenson, appointed by the Governor and subject to confirmation by the General Assembly, who shall serve *at the pleasure of the Governor* for terms of four years each; and three additional members, appointed by the Governor and subject to confirmation by the General Assembly, who shall serve at the pleasure of the Governor for terms of four years each. Appointments to fill vacancies other than by expiration of term shall be made for the unexpired terms. No member appointed by the Governor shall be eligible to serve more than two successive terms.

Of the initial appointments to be made by the Governor, three shall be appointed for two-year terms, three shall be appointed for three-year terms, and three shall be appointed for four-year terms. The State Treasurer and the Chairman of the Commonwealth Transportation Board shall serve terms on the Board coincident with their terms in office.

The Governor shall designate the chairman of the Commonwealth Transportation Board, or his designee, as chairman of the Authority. The chairman shall be the chief executive officer of the Authority and shall receive such compensation as the Governor shall fix. The remaining members of the Board shall receive such compensation as provided for by law.

~~The chairman shall sign and execute all vouchers for the disbursement of funds belonging to the Authority upon authorization by the Board.~~ The Board shall elect one of its members as vice-chairman who shall exercise the powers of the chairman when so directed by the chairman. Six members of the Board shall constitute a quorum for the transaction of all business of the Authority. The Board may also elect from its membership a secretary and prescribe his powers and duties.

The Board may employ or retain such employees, agents, financial advisers and attorneys as it may deem necessary and fix their compensation.

§ 33.1-428. Limited purpose of authority; Virginia Coalfield Expressway Corridor.

The General Assembly declares it to be in the public interest that the economic development needs and economic growth potential of Southwestern Virginia be addressed by the *acquisition, design, construction, financing, and operation* of an adequate, modern, safe, and efficient highway system, the Virginia Coalfield Expressway Corridor, generally along Virginia's Southwestern boundary, from at or near the Kentucky border in the County of Wise to at or near the West Virginia border in the County of Buchanan. The Authority is created and shall be vested with powers solely to provide for the

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HB2403

59 *acquisition, design, construction, improvement, financing, and operation* of this highway system,  
60 hereafter referred to as "the Program," with the approval of the Commonwealth Transportation Board.

61 § 33.1-429. General powers.

62 The Authority is vested with the powers of a body corporate, including, without limitation, the power  
63 to:

- 64 1. Sue and be sued;
- 65 2. Make contracts *and issue bonds or other obligations*;
- 66 3. Adopt and use a common seal, and alter such seal at its pleasure;
- 67 4. Procure insurance, participate in insurance plans, and provide self-insurance. The purchase of  
68 insurance, participation in an insurance plan, or the creation of a self-insurance plan by the Authority  
69 shall not be deemed a waiver or relinquishment of any sovereign immunity to which the Authority or its  
70 officers, directors, employees, or agents are otherwise entitled;
- 71 5. Develop policies and procedures generally applicable to the procurement of goods, services and  
72 construction based on competitive principles; and
- 73 6. Use any legal means to carry out its limited purpose.

74 § 33.1-430. *Virginia Coalfield Expressway Corridor Development Fund.*

75 A. *A special nonreverting fund, the Virginia Coalfield Expressway Corridor Development Fund (the*  
76 *Fund) as established in § 33.1-432, shall be used for the establishment and implementation of the*  
77 *Program, including payment of bonds or other obligations issued to finance the cost of the Program.*  
78 *The moneys of the Fund shall be used for no other purpose than the furtherance of the Virginia*  
79 *Coalfield Expressway Corridor. Moneys in the Fund shall be used for, including without limitation,*  
80 *environmental and engineering studies, rights-of-way acquisition; the acquisition, design, construction,*  
81 *improvement, and operation of transportation projects and facilities relating to the Program; issuance*  
82 *and other financing costs for bonds or other obligations of the Authority; and other expenses of the*  
83 *Authority.*

84 B. *Allocations from the Fund shall be made by the Authority for the creation of the Program and*  
85 *enhancement of a safe, efficient, highway system connecting the communities, businesses, places of*  
86 *employment, and residents of the southwestern-most portion of the Commonwealth, thereby enhancing*  
87 *the economic development potential, employment opportunities, mobility, and quality of life along such*  
88 *highway.*

89 C. *Allocations from the Fund shall not diminish or replace allocations made or planned to be made*  
90 *from other sources or diminish allocations to which any highway, project, facility, district, system, or*  
91 *locality would be entitled under other provisions of this title, or any other provision of law, but shall be*  
92 *supplemental to other allocations to the end that highway resource improvements in the Program may*  
93 *be accelerated and augmented. Allocations from the Fund may be applied to highway projects that are*  
94 *directly related to the Program in the interstate, primary, secondary, or urban system, contrary*  
95 *provisions of this title notwithstanding.*

96 D. *The Authority may expend such funds from all sources as may be lawfully available to initiate the*  
97 *Program and to support bonds and other obligations described in subsection F. Any moneys expended*  
98 *from the Transportation Trust Fund established under § 33.1-23.03:1. for the Program, other than*  
99 *moneys contained in the Fund, may be reimbursed from the Fund.*

100 E. *To the maximum extent possible, the Program shall conform to the arterial network developed by*  
101 *the Commonwealth Transportation Board.*

102 F. *To the extent permitted by Article X, Section 9 of the Constitution of Virginia, moneys contained*  
103 *in the Fund may be used to secure payment of bonds or other obligations, and the interest thereon,*  
104 *issued in furtherance of the purposes of this section. In addition, the Authority is authorized to receive,*  
105 *dedicate, or use legally available Transportation Trust Fund revenues and any other available sources*  
106 *of funds, including any funds available to the Commonwealth from the Appalachian Regional*  
107 *Commission or the Appalachian Development Highway System program, to secure the payment of bonds*  
108 *or other obligations, including interest and premium thereon, in furtherance of the Program, subject to*  
109 *appropriation by the General Assembly. No bond or other obligations payable from revenues of the*  
110 *Fund shall be issued unless specifically approved by the General Assembly. No bond or other*  
111 *obligations, secured in whole or in part by revenues of the Fund, shall pledge the full faith and credit*  
112 *of the Commonwealth.*

113 § 33.1-431. *Other powers of the Authority.*

114 A. *The Authority may issue revenue bonds to be known and designated as "Virginia Coalfield*  
115 *Expressway Transportation Revenue Bonds," secured (i) by certain revenues received from the Fund,*  
116 *subject to their appropriation by the General Assembly; (ii) by lease or contract payments made by the*  
117 *Commonwealth to the Authority for use of the Program or any assets of the Program; (iii) to the extent*  
118 *required, from revenues legally available from the Transportation Trust Fund established under*  
119 *§ 33.1-23.03:1; and (iv) to the extent required, from any other legally available funds which shall have*  
120 *been appropriated by the General Assembly, including funds from the Appalachian Regional*

Commission and the Appalachian Development Highway System program.

B. The bonds of an issue shall be dated, shall bear interest at the rate or rates and shall mature or be payable at such time or times as may be determined by the Board or by formula or method established by resolution of the Board, and may be made redeemable before maturity, at the option of the Board, at such price or prices and under terms and conditions as may be approved by the Board, or its designee, prior to the issuance of the bonds. The principal and interest of the bonds may be made payable in any lawful medium. The Board, or its designee, shall determine the form of the bonds and shall fix the denomination or denominations of the bonds and the place or places of payment of principal, interest and premium thereof, which may be at any bank or trust company within or without the Commonwealth. The bonds shall be signed by the chairman or vice chairman and the official seal of the Authority shall be affixed thereto and attested to by the secretary or assistant secretary of the Authority and any coupons attached thereto shall bear the facsimile signatures of the chairman. When any officer whose signature appears on the bonds or coupons ceases to be an officer before the delivery of the bonds, the officer's signature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All revenue bonds issued under the provisions of this chapter shall have and are hereby declared to have, as between successive holders, all the qualities and incidents of negotiable instruments under the negotiable instruments law of the Commonwealth. All revenue bonds issued under the provisions of this chapter and the income thereof shall be exempt from all taxation within the Commonwealth. The bonds may be issued in coupon or in registered form, or both, as the Board, or its designee, may determine and provision may be made for the registration of any coupon bond as to principal alone and also as to both principal and interest and for the reconversion of any bonds registered as to both principal and interest into coupon bonds. The Board may also provide for the replacement of any bond that is mutilated, destroyed, or lost.

C. The Authority may provide for the issuance of revenue refunding bonds of the Authority for the purpose of refunding any bonds or other obligations then outstanding which have been issued under the provisions of this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of the obligations and any issuance or financing expenses related thereto.

D. Virginia Coalfield Expressway Transportation Revenue Bonds issued under the provisions of this chapter shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the full faith and credit of the Commonwealth, but such bonds shall be payable solely from the funds herein provided in this section.

E. The provisions of Article 5 (§ 33.1-267 et seq.) of Chapter 3 shall apply to the powers of the Authority and to the issuance of any Virginia Coalfield Expressway Transportation Revenue Bonds issued for the purpose of providing for the establishment and implementation of the Program, mutatis mutandis, except to the extent that matters are specifically addressed in this chapter in which case the provisions of this chapter shall apply.

F. The Authority may enter into contracts or lease agreements for the use of the transportation facilities improved or constructed as part of the Program, and such contract or lease payments may be used in part to pay any debt service on bonds or other obligations issued to pay for costs of the Program.

§ 33.1-432. Virginia Coalfield Expressway Corridor Development Fund created.

There is hereby created a special nonreverting fund which shall be known as the Virginia Coalfield Expressway Corridor Development Fund (the Fund), consisting of moneys appropriated by the General Assembly from time to time and designated for this Fund and other moneys deposited by or on behalf of the Authority and all interest, dividends, and appreciation which may accrue thereto. Any moneys remaining in the Fund at the end of a biennium shall not revert to the general fund, but shall remain in the Fund. Allocations from the Fund may be paid to any authority, locality, or commission for the purposes specified in this chapter. The Fund shall receive priority in the allocation of funds received by the Commonwealth from the Appalachian Regional Commission and the Appalachian Development Highway System program.

§ 33.1-433. Bonds made securities for investment and deposit.

Bonds issued by the Authority under the provisions of this chapter shall be securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Any bonds issued by the Authority shall be securities that may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations of the Commonwealth is now or may be authorized by law.

§ 33.1-434. Contracts concerning interest rates, currency, cash flow or other basis.

182     *The Authority may enter into any contract which the Board determines to be necessary or*  
183 *appropriate to place the obligation or investment of the Authority, as represented by the bonds or other*  
184 *obligations or the investment of their proceeds, in whole or in part, on the interest rate, cash flow or*  
185 *other basis desired by the Authority, which contract may include, without limitation, contracts commonly*  
186 *known as interest rate swap agreements, and futures or contracts providing for payments based on*  
187 *levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the*  
188 *Authority in connection with, or incidental to, entering into, or maintaining any (i) agreement which*  
189 *secures bonds or other obligations or (ii) investment, or contract providing for investment, otherwise*  
190 *authorized by law. These contracts and arrangements may contain such payment, security, default,*  
191 *remedy, and other terms and conditions as determined by the Board, after giving due consideration to*  
192 *the creditworthiness of the counterparty or other obligated party, including any rating by any nationally*  
193 *recognized rating agency, and any other criteria as may be appropriate.*

194 **2. That the Virginia Coalfield Coalition Authority is authorized to issue bonds as follows:**

195     *§ 1. The Virginia Coalfield Coalition Authority is hereby authorized, by and with the consent of the*  
196 *Governor, to issue, pursuant to the provisions of Chapter 14 (§ 33.1-426 et seq.) of Title 33.1 of the*  
197 *Code of Virginia, and pursuant to Article X, Section 9 (d) of the Constitution of Virginia, at one time or*  
198 *from time to time, bonds or other obligations in an aggregate principal amount not exceeding*  
199 *\$300,000,000 to finance or refinance the cost of the Virginia Coalfield Expressway Corridor Program*  
200 *(the Project), established in § 33.1-428 of the Code of Virginia, plus an amount for the issuance costs,*  
201 *reserve funds, and other financing expenses. The proceeds of such bonds or other obligations shall be*  
202 *used exclusively for the purpose of providing funds, with any other available funds, for paying costs*  
203 *incurred or to be incurred for the acquisition, design, construction, improvement, financing, and*  
204 *operation of an adequate, modern, safe, and efficient highway system which comprises the Virginia*  
205 *Coalfield Expressway Corridor Program; such costs to include environmental and engineering studies,*  
206 *rights-of-way acquisition, acquisition, design, construction, improvement, and operation of transportation*  
207 *projects and facilities relating to the Program, issuance and other financing costs for bonds or other*  
208 *obligations of the Authority, and other expenses of the Authority.*

209     *§ 2. The proceeds of the bonds or other obligations herein authorized shall be expended by the*  
210 *Virginia Coalfield Coalition Authority for the purpose for which they were issued.*

211     *§ 3. All expenses incurred relating to the bonds or other obligations herein authorized shall be paid*  
212 *from the proceeds of the bonds or other obligations or from any available funds as the Virginia*  
213 *Coalfield Coalition Authority shall determine. Any advance made by the Board of the Virginia Coalfield*  
214 *Coalition Authority may be reimbursed from the Virginia Coalfield Expressway Corridor Development*  
215 *Fund established under § 33.1-432 of the Code of Virginia or from the proceeds of the bonds or other*  
216 *obligations.*

217     *§ 4. The Virginia Coalfield Coalition Authority, prior to the issuance of the bonds or other*  
218 *obligations, shall establish a sinking fund for the payment of the bonds to the credit of which fund there*  
219 *shall be deposited such amounts as are required to pay debt service on the bonds or other obligations*  
220 *when due and payable for such fiscal years from one or more of the following sources: (i) revenues*  
221 *received from the Virginia Coalfield Expressway Corridor Development Fund and pursuant to*  
222 *§ 33.1-430 of the Code of Virginia, subject to their appropriation by the General Assembly; (ii) by*  
223 *contract or lease payments made by the Commonwealth to the Board of Commissioners of the Virginia*  
224 *Coalfield Coalition Authority for use of the Program or any assets of the Program; (iii) to the extent*  
225 *required, revenues legally available from the Transportation Trust Fund established under*  
226 *§ 33.1-23.03:1 of the Code of Virginia; and (iv) to the extent required for the payment of the bonds or*  
227 *other obligations, any other legally available funds which shall have been appropriated by the General*  
228 *Assembly, including funds from the Appalachian Regional Commission and the Appalachian*  
229 *Development Highway System program.*

230 **3. If any clause, sentence, paragraph, section, or part of this act or the application thereof to any**  
231 **person, entity, or circumstance is adjudged invalid by any court of competent jurisdiction, such**  
232 **judgment shall not affect the validity of the remainder hereof but shall be confined to the clause,**  
233 **sentence, paragraph, section, or part hereof directly involved in the controversy in which such**  
234 **judgment shall have been rendered, and to this end the provisions of this act are severable.**