

VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

CHAPTER 827

An Act to amend and reenact §§ 33.1-72.1 and 33.1-75.3 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 33.1-23.05, and to repeal § 33.1-75.1 of the Code of Virginia, relating to matching and revenue-sharing funds for highways in certain counties, cities, and towns.

[S 721]

Approved April 7, 2006

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-72.1 and 33.1-75.3 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 33.1-23.05 as follows:

§ 33.1-23.05. Revenue-sharing funds for systems in certain counties, cities, and towns.

A. From annual allocations of state funds for the maintenance, improvement, construction, or reconstruction of the systems of state highways, the Commonwealth Transportation Board shall make an equivalent matching allocation to any county, city, or town for designations by the governing body of up to \$1 million in county, city, or town general funds for use by the county, city, or town to construct, maintain, or improve the highway systems within such county, city, or town. After adopting a resolution supporting the action, the governing body may request revenue-sharing funds to construct, maintain, or improve a highway system located in another locality or to bring subdivision streets, used as such prior to July 1, 1992, up to standards sufficient to qualify them for inclusion in the state primary and secondary system of highways.

B. The allocation of funds to localities shall be only for the purposes set forth in subsection A and shall be (i) first when such governing body commits more than \$1 million in general funds for such purpose; (ii) second when such project is administered by the city, county, or town; (iii) third when the allocation will accelerate an existing project in the Six-Year Improvement Program or the locality's capital plans; and (iv) from any funds remaining, any other request that has a matching allocation from the governing body.

C. The Department will contract with the county, city, or town for the implementation of the project or projects. Such contract may cover either a single project or may provide for the locality's implementation of several projects during the fiscal year. The county, city, or town will undertake implementation of the particular project or projects by obtaining the necessary permits from the Department of Transportation in order to ensure that the improvement is consistent with the Department's standards for such improvements. If administered by the Department, such contract shall also require that the governing body pay to the Department within 30 days the local revenue-sharing funds from its general fund upon written notice by the Department of its intent to proceed.

D. Up to one-half of any local government's contributions under this section may take the form of proffers accepted by the locality and deposited into their general fund.

E. Total Commonwealth funds allocated by the Board under this section shall not exceed \$50 million in any one fiscal year.

F. No more than three months prior to the end of any fiscal year in which less than \$50 million has been allocated by the Board to specific governing bodies, those localities requesting more than \$1 million may be allowed an additional allocation. The additional allocation shall be at the discretion of the Commonwealth Transportation Board among the localities receiving the maximum allocation under subsection A.

§ 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, 1992, 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. "Speculative interest," as used in this section means that the original developer or a successor developer retains ownership in any lot abutting such street for development or speculative purposes. In instances where it is determined that speculative interest is retained by the original developer, developers, or successor developers and the governing body of the county deems that extenuating circumstances exist, the governing body of the county shall require a pro rata participation by such original developer, developers, or successor developers as prescribed in subsection G of this section as a condition of the county's recommendation pursuant to this section.

D. "Qualifying rural addition cost," as used in this section, means that portion of the estimated engineering and construction cost to improve the street to the minimum standards for acceptance remaining after reducing the total estimated cost by any prorated amount deemed the responsibility of others based on speculative interests as defined in subsection C.

E. 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 40 feet or (ii) in the event of extenuating circumstances as determined by the Commonwealth Transportation Commissioner, such street has a minimum dedicated width of 30 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.

F. Such street shall only be taken into the secondary system of state highways if the governing body of the county has identified and made available the funds required to improve the street to the required minimum standards. The county may consider the following options to fund the required improvements for streets accepted under this section:

1. The local governing body of the county may use a portion of the county's annual secondary highway system construction allocation designated as "rural addition funds" to fund the qualifying rural addition costs for qualifying streets if the county agrees to contribute from county revenue or the special assessment of the landowners on the street in question one-half of the qualifying rural addition 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 75 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. 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.

2. The local governing body of any county may use a portion of its annual secondary highway system construction allocation designated as "rural addition funds" to fund the qualifying rural addition cost for qualifying streets within the limitation of funds and the mileage limitation of the Commonwealth Transportation Board's policy on rural additions.

3. The local governing body of any county may use revenues derived from the sale of bonds to finance the construction of rural additions to the secondary system of such county. In addition, from the funds allocated by the Commonwealth for the construction of secondary road improvements, such governing body may use funds allocated within the Commonwealth Transportation Board policy for the construction of rural additions to pay principal and interest on bonds associated with rural additions in such county, provided the revenue derived from the sale of such bonds is not used as the county matching contribution under ~~§ 33.1-75.1~~ § 33.1-23.05. The provisions of this section shall not constitute a debt or obligation of the Commonwealth Transportation Board or the Commonwealth of Virginia.

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

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

6. The local governing body of the county may utilize the allocations made to the county in accordance with ~~§ 33.1-75.1~~ § 33.1-23.05.

G. In instances where it is determined that speculative interest, as defined in subsection C, exists the basis for the pro rata percentage required of such developer, developers, or successor developers shall be the proportion that the value of the abutting parcels owned or partly owned by the developer, developers, or successor developers bears to the total value of all abutting property as determined by the current evaluation of the property for real estate purposes. The pro rata percentage shall be applied to

the Department of Transportation's total estimated cost to construct such street to the necessary minimum standards for acceptance to determine the amount of costs to be borne by the developer, developers, or successor developers. Property so evaluated shall not be assessed in the special assessment for the determination of the individual pro rata share attributable to other properties. Further, when such pro rata participation is accepted by the governing body of the county from such original developer, developers, or successor developers, such amount shall be deducted from the Department of Transportation's total estimated cost and the remainder of such estimated cost, the qualifying rural addition cost, shall then be the basis of determining the assessment under the special assessment provision or determining the amount to be provided by the county when funded from general county revenue under subsection C of this section or determining the amount to be funded as a rural addition under subsection D of this section.

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

I. "Rural addition funds" means those funds reserved from the county's annual allocation of secondary system highway construction funds, as defined in § 33.1-67, for the purpose of this section. If such funds are not used by such county for such purpose during the fiscal year they are so allocated, the funds may be held for such purpose for the four succeeding fiscal years. A maximum of five percent of the annual secondary system highway construction allocation may be reserved by the governing body for rural additions.

§ 33.1-75.3. Construction and improvement of primary or secondary highways by counties.

A. Notwithstanding any other provisions of this article, the governing body of any county may expend general revenues or revenues derived from the sale of bonds for the purpose of constructing or improving highways, including curbs, gutters, drainageways, sound barriers, sidewalks, and all other features or appurtenances conducive to the public safety and convenience, which either have been or may be taken into the primary or secondary system of state highways. Project planning and the acquisition of rights-of-way shall be under the control and at the direction of the county, subject to the approval of project plans and specifications by the Department of Transportation. All costs incurred by the Department of Transportation in administering such contracts shall be reimbursed from the county's general revenues or from revenues derived from the sale of bonds or such costs may be charged against the funds which the county may be entitled to under the provisions of § 33.1-23.1, 33.1-23.2 or 33.1-23.4.

B. Projects undertaken under the authority of subsection A of this section shall not diminish the funds to which a county may be entitled under the provisions of § 33.1-23.1, 33.1-23.2, 33.1-23.4, or ~~33.1-75.1~~ 33.1-23.05.

C. At the request of the county, the Department of Transportation may agree to undertake the design, right-of-way acquisition or construction of projects funded by the county. In such situations, the Department of Transportation and the county will enter into an agreement specifying all relevant procedures and responsibilities concerning the design, right-of-way acquisition, construction or contract administration of projects to be funded by the county. The county will reimburse the Department of Transportation for all costs incurred by the Department in carrying out the aforesaid activities from general revenues or revenues derived from the sale of bonds.

D. Notwithstanding any contrary provision of law, any county may undertake activities towards the design, land acquisition, or construction of primary or secondary highway projects that have been included in the six-year plan pursuant to § 33.1-70.01, or in the case of a primary highway, an approved project included in the six-year improvement program of the Commonwealth Transportation Board. In such situations, the Department of Transportation and the county shall enter into an agreement specifying all relevant procedures and responsibilities concerning the design, right-of-way acquisition, construction, or contract administration of projects to be funded by the Department. Such activities shall be undertaken with the prior concurrence of the Department of Transportation, and the Department shall reimburse the county for expenses incurred in carrying out these activities. Such reimbursement shall be derived from primary or secondary highway funds which the county may be entitled to under the provisions of this chapter. The county may undertake these activities in accordance with all applicable county procedures, provided the Commissioner finds that those county procedures are substantially similar to departmental procedures and specifications.

E. If funding for the construction of a primary or interstate project is scheduled in the Commonwealth Transportation Board's Six-Year Improvement Program as defined in § 33.1-12, a locality may choose to advance funds to the project. If such advance is offered, the Board may consider such request and agree to such advancement and the subsequent reimbursement of the locality of the advance in accordance with terms agreed upon by the Board or its designee and the locality.

2. That § 33.1-75.1 of the Code of Virginia is repealed.