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SENATE BILL NO. 192

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Transportation
on March 2, 2006)

(Patron Prior to Substitute—Senator Williams)

A BILL to amend and reenact §§ 33.1-23.03:1, 33.1-287, and 33.1-288 of the Code of Virginia, 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 33.1-391.11, and to repeal § 33.1-253 of the Code of Virginia, Chapter 693 of the Acts of Assembly of 1954, as amended, and Chapter 714 of the Acts of Assembly of 1956, as amended and incorporated by reference as § 33.1-253 of the Code of Virginia, relating to the Chesapeake Bay Bridge and Tunnel Commission and the Hampton Roads Bridge and Tunnel Authority.

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-23.03:1, 33.1-287, and 33.1-288 of the Code of Virginia are 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 33.1-391.11, as follows:

§ 33.1-23.03:1. Transportation Trust Fund.

There is hereby created in the Department of the Treasury a special nonreverting fund to be known as the Transportation Trust Fund, consisting of:

1. Funds remaining for highway construction purposes, among the several highway systems pursuant to § 33.1-23.1.

2. [Repealed.]

3. The additional revenues generated by enactments of Chapters 11, 12 and 15 of the Acts of Assembly, 1986 Special Session, and designated for this fund.

4. Tolls and other revenues derived from the projects financed or refinanced pursuant to this title which are payable into the state treasury and tolls and other revenues derived from other transportation projects, which may include upon the request of the applicable appointed governing body, as soon as their obligations have been satisfied, such tolls and revenue derived for transportation projects pursuant to ~~§ 33.1-253 (Chesapeake Bay Bridge and Tunnel District)~~ and § 33.1-320 (Richmond Metropolitan Authority) or if the appointed governing body requests refunding or advanced refunding by the Board and such refunding or advanced refunding is approved by the General Assembly. Such funds shall be held in separate subaccounts of the Transportation Trust Fund to the extent required by law or the Board.

5. Tolls and other revenues derived from the Richmond-Petersburg Turnpike, provided that such funds shall be held in a separate subaccount of the Transportation Trust Fund and allocated as set forth in Chapter 574 of the Acts of Assembly of 1983 until expiration of that Act.

6. Such other funds as may be appropriated by the General Assembly from time to time, and designated for this fund.

7. All interest, dividends and appreciation which may accrue to the Transportation Trust Fund and the Highway Maintenance and Construction Fund, except that interest on funds becoming part of the Transportation Trust Fund under subdivision 1 and the Highway Maintenance and Construction Fund shall not become part of the Transportation Trust Fund until July 1, 1988.

8. All amounts required by contract to be paid over to the Transportation Trust Fund.

§ 33.1-287. Cessation of tolls.

When the particular revenue bonds issued for any project or projects and the interest thereon have been paid, or a sufficient amount has been provided for their payment and continues to be held for that purpose, the Board shall cease to charge tolls for the use of such project or projects and thereafter such project or projects shall be free; however, the Board may thereafter charge tolls for the use of any such project when tolls are required for maintaining, repairing, operating, improving, and reconstructing such project, when such tolls have been or are pledged by the Board to the payment of revenue bonds issued under the provisions of the article for another project or projects on approval of the General Assembly or when such tolls are designated by the Board to be deposited into the Transportation Trust Fund. But any such pledge of tolls of a project to the payment of bonds issued for another project shall not be effectual until the principal and interest of the bonds issued for the first mentioned project shall have been paid or provision made for their payment.

The foregoing provisions shall also apply to tolls on projects constructed pursuant to the acts incorporated by reference by ~~§ 33.1-253 (Chesapeake Bay Bridge and Tunnel District)~~, and § 33.1-320 (Richmond Metropolitan Authority), provided their governing bodies have acted as set forth in subdivision 4 of § 33.1-23.03:1.

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§ 33.1-288. Use of certain funds by Board.

The Board may, in its discretion, use any part of funds available for the construction of state highways, in any construction district in which any project authorized for toll revenue bond financing by the Commonwealth Transportation Board as described in § 33.1-268, or by the Richmond-Petersburg Turnpike Authority as described by § 33.1-319, or by the Richmond Metropolitan Authority as described by § 33.1-320, or by the Elizabeth River Tunnel Commission as described by Chapter 130 of the 1942 Acts of Assembly as amended, is wholly or partly located, to aid in the payment of the cost of such projects and for the payment, purchase or redemption of revenue bonds issued in connection with any such project, or in connection with any such project and any one or more other projects. The Board may also, in its discretion, use any part of funds available for the maintenance of state highways, in any construction district in which any such project is wholly or partly located, to provide for the operation, maintenance and repair of any such project and for the payment of interest on revenue bonds issued in connection with any such project, or in connection with any such project and any one or more other projects; provided further, the Commonwealth Transportation Board may, in its discretion, use funds under the terms of this section for the emergency operation, maintenance and repair of the project of the Chesapeake Bay Bridge and Tunnel Commission as described by § 33.1-253 in the event of damage to the bridge under a repayment agreement approved by the bond trustee, and may also pay to the Chesapeake Bay Bridge and Tunnel Commission, for aid in the maintenance of the project, the same amounts authorized by § 33.1-41.1 for payments for maintenance to certain incorporated towns and cities.

Provided, however, that in the event the Board uses any part of the fund available to itself for the construction of roads in the State Highway System without reference to construction districts, commonly called the "gap fund," for any purpose permitted by this section, it shall not expend in excess of three eighths of the amount of such fund, including other amounts of such fund that may be expended in the three districts in which such projects are located; and provided, further, that in no case shall any of the funds of any construction district other than those in which the projects are located be used for the purposes of this article.

CHAPTER 10.2.

HAMPTON ROADS BRIDGE AND TUNNEL AUTHORITY.

§ 33.1-391.6. Short title.

This chapter shall be known and may be cited as the Hampton Roads Bridge and Tunnel Authority Act.

§ 33.1-391.7. Authority created.

There is hereby created a body corporate and a political subdivision of the Commonwealth to be known as the Hampton Roads Bridge and Tunnel Authority, hereinafter in this chapter known as "the Authority."

§ 33.1-391.8. Authority to impose and collect tolls.

Notwithstanding any contrary provision of this title and in accordance with all applicable federal statutes and requirements, the Authority may impose and collect tolls in amounts established by the Authority for the use of any or all of the bridges and tunnels enumerated in this section. The amount of any such toll may be varied from facility to facility, by lane, by time of day, and by day of the week, or some combination thereof.

1. The James River Bridge (U.S. Routes 17 and 258 and Virginia Route 32 bridge between Newport News and Isle of Wight County);

2. The Monitor Merrimac Memorial Bridge-Tunnel (Interstate Route 664 bridge-tunnel across/beneath Hampton Roads between Newport News and Suffolk);

3. The Hampton Roads Bridge-Tunnel (Interstate Route 64 and U.S. Route 60 bridge-tunnel across/beneath Hampton Roads between Hampton and Norfolk);

4. The Midtown Tunnel (U.S. Route 58 tunnel beneath the Elizabeth River between Norfolk and Portsmouth);

5. The Downtown Tunnel (Interstate Route 264 tunnel beneath the Elizabeth River between Norfolk and Portsmouth);

6. The Interstate Route 64 bridge over the Elizabeth River in Chesapeake; and

7. The Chesapeake Bay Bridge-Tunnel (U.S. Route 13 bridge-tunnel across/beneath the Chesapeake Bay between Virginia Beach and Northampton County).

The Authority's ability to impose tolls for use of the Chesapeake Bay Bridge-Tunnel shall be subject to requirements of any bond indenture applicable to any tolls for use of that facility imposed immediately prior to July 1, 2006.

Proceeds from tolls applicable to any bridge or tunnel other than the Chesapeake Bay Bridge-Tunnel shall be used in accordance with federal requirements and to fund the Authority's expenses in carrying out its duties and obligations.

§ 33.1-391.9. Reconstruction, etc., of facilities; funding of construction; Authority a responsible

public entity under Public-Private Transportation Act of 1995.

The Authority may also impose and collect tolls for use of any bridge or tunnel enumerated in § 33.1-391.8 whose reconstruction, expansion, rehabilitation, or improvement is required in order to enhance capacity and manage traffic congestion. The amount of any such toll may be varied from facility to facility, by lane, by time of day, and by day of the week, vehicle type, weight, number of axles, size, or some combination thereof.

The Authority is a responsible public entity as defined in the Public-Private Transportation Act of 1995 (§ 56-556 et seq.).

§ 33.1-391.10. Composition of Authority; chairman and vice-chairman; quorum; administrative support services and office space.

The Authority shall consist of 10 members as follows: (i) one member appointed by the City Council of the City of Chesapeake, (ii) one member appointed by the City Council of the City of Hampton, (iii) one member appointed by the Board of Supervisors of Isle of Wight County, (iv) one member appointed by the City Council of the City of Newport News, (v) one member appointed by the City Council of the City of Norfolk, (vi) one member appointed by the Board of Supervisors of Northampton County, (vii) one member appointed by the City Council of the City of Portsmouth, (viii) one member appointed by the City Council of the City of Suffolk, (ix) one member appointed by the City Council of the City of Virginia Beach, and (x) the Virginia Department of Transportation's district administrator for the Hampton Roads highway construction district. All members appointed by local governing bodies shall be members of the local governing bodies by whom they are appointed and shall be selected by majority vote. If a sitting member ceases to serve as a member of the local governing body, he shall cease to be a member of the Authority. Members of the Authority appointed by local governing bodies shall serve for terms of four years and may be reappointed for one additional term. For the initial appointments only: the members appointed by the City Council of the City of Chesapeake and the Board of Supervisors of Northampton County shall be appointed a term of one year; those members appointed by the City Council of the City of Hampton and by the Board of Supervisors of Isle of Wight County shall be appointed for terms of two years; those members appointed by the City Council of the City of Newport News and by the City Council of the City of Norfolk shall be appointed for terms of three years; and the remaining members shall be appointed for terms of four years. Any such initial appointment of two years or less shall not count against the term limitation. Vacancies shall be filled by appointment for the unexpired term by the making the original appointment. The Hampton Roads highway construction district administrator shall serve ex officio without a vote.

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. A majority of the Authority shall constitute a quorum.

The members of the Authority shall be reimbursed for their actual and necessary expenses incurred in carrying out their duties and, in addition, shall be paid a per diem equal to the amount paid members of the Commonwealth Transportation Board for each day or portion thereof when engaged in Authority official business.

The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the financial accounts of the Authority.

§ 33.1-391.11. Additional 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 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 and the provisions of § 33.1-422;

7. To construct or acquire, by purchase, lease, contract, or otherwise, highways, bridges, tunnels, railroads and rail facilities and other transportation-related facilities in the manner and to the extent

183 *not inconsistent with the provisions of § 33.1-422;*

184 8. *To enter into agreements or leases with public or private entities for the operation of bridges and*
185 *tunnels;*

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

188 10. *To the extent funds are made available to the Authority to do so, to employ employees, agents,*
189 *advisors, and consultants, including without limitation, attorneys, financial advisers, engineers, and*
190 *other technical advisers and, the provisions of any other law to the contrary notwithstanding, to*
191 *determine their duties and compensation; and*

192 11. *To the extent not inconsistent with other provisions of this chapter, and without limiting or*
193 *restricting the powers otherwise given the Authority, to exercise all the powers given to transportation*
194 *district commissions by §§ 15.2-4518 and 15.2-4519.*

195 *In exercise of its powers and performance of its duties under this chapter, the Authority shall comply*
196 *with all provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.)*

197 2. **That § 33.1-253 of the Code of Virginia, Chapter 693 of the Acts of Assembly of 1954, as**
198 **amended, and Chapter 714 of the Acts of Assembly of 1956, as amended and incorporated by**
199 **reference as § 33.1-253 of the Code of Virginia, are repealed.**

200 3. **That no provision of this act shall be so construed as to infringe any indenture or contract**
201 **associated with any bonds or other financial obligations entered into by the Chesapeake Bay**
202 **Bridge and Tunnel Commission prior to July 1, 2006, and any and all financial obligations of the**
203 **Chesapeake Bay Bridge and Tunnel Commission entered into prior to July 1, 2006, shall, on and**
204 **after July 1, 2006, be deemed to be obligations of the Hampton Roads Bridge and Tunnel**
205 **Authority established by this act.**

206 4. **That the staff of the Hampton Roads Planning District Commission, Chesapeake Bay Bridge**
207 **and Tunnel Commission, and the Virginia Department of Transportation shall work cooperatively**
208 **to assist the proper formation and effective organization of the Hampton Roads Bridge and**
209 **Tunnel Authority. Until such time as the Hampton Roads Bridge and Tunnel Authority is fully**
210 **established, the staff of the Hampton Roads Planning District Commission shall serve as its staff,**
211 **and its office facilities shall be used by the Hampton Roads Bridge and Tunnel Authority. The**
212 **Authority shall pay the costs of such staff and office facilities as appropriate.**

213 5. **That, except as otherwise explicitly provided in this act, until such time as the Virginia**
214 **Department of Transportation determines that revenues of the Hampton Roads Bridge and Tunnel**
215 **Authority are adequate fully to cover costs of maintenance of the facilities enumerated in**
216 **§ 33.1-391.8 of the Code of Virginia, other than the Chesapeake Bay Bridge-Tunnel, the**
217 **Commonwealth Transportation Board shall allocate funding to and the Department of**
218 **Transportation shall perform or caused to be performed all maintenance and operation of such**
219 **bridges and tunnels and any other required activities and services in effect as of January 1, 2006.**

220 6. **That the first projects to be funded pursuant to subsection B of § 58.1-815.1 of the Code of**
221 **Virginia shall be as determined at the February 2006 meeting of the Northern Virginia**
222 **Transportation Authority.**