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SENATE BILL NO. 721

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Transportation
on February 16, 2006)

(Patron Prior to Substitute—Senator Saslaw)

A BILL 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 special funds for highway systems in certain counties, cities, and towns.

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. Special matching funds for systems in counties, cities, and towns.

A. From, and as a first priority of, annual allocations of state funds for the 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 Commonwealth Transportation Board to construct or improve the highway systems within such county, city, or town. Such funds allocated by the Commonwealth Transportation Board and such county, city, or town funds shall be placed in special fund accounts of the Board and county, city, or town respectively, both to be known as the "... (insert name of county, city or town) highway fund," and shall be used solely for the purposes of either (i) improving or constructing the highway systems within such county, city, or town; or (ii) bringing subdivision streets, used as such prior to July 1, 1990, up to standards sufficient to qualify them for inclusion in the state primary and secondary system of highways. After due consultation and exchange of recommendations with the Board, the governing body of such county, city, or town shall determine what portion of such funds shall be used for construction, and what portion for the improvement of highways in such county, city, or town. That portion so designated by the governing body for construction shall be allocated to specific projects by the Board; that portion designated by the governing body for improvement shall be allocated to specific highways by the governing body. The county, city, or town shall pay over to the Board that amount of its special fund account needed for a project upon notice by the Board of its intent to proceed with the project. Projects identified by the local governing body for construction with county, city, or town general funds as provided in this section need not be included in the transportation improvement plan for that locality.

B. Upon indication by a representative of the Department that a project or projects funded pursuant to subsection A cannot be implemented by the Department within the fiscal year for which such sharing funds have been allocated, the Department may contract with the county, city, or town for the implementation of the project or projects by the county, city, or town. Such contract may cover either a single project or may provide for the locality's implementation of several projects during the fiscal year. Upon approval by the Department, the county, city, or town may expend from its special fund created under subsection A, funds to undertake the implementation of a particular project or projects. 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.

C. Total state funds allocated statewide under this section shall not exceed \$50 million in any one fiscal year.

D. Notwithstanding the limitations specified in subsection A, one month prior to the end of any fiscal year in which less than \$50 million has been allocated from state funds under this section, those localities requesting more than \$1 million may be allowed an additional allocation. The difference between the amount first allocated and \$50 million shall be allocated at the discretion of the Commonwealth Transportation Board among the localities receiving the maximum allocation under subsection A.

E. Any local government's contributions under this section may take the form of proffers accepted by the locality and proffered in turn to the Commonwealth.

§ 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

60 local ordinance for control of the development of subdivision streets to the necessary standards for
61 acceptance into the secondary system.

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

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

73 E. Whenever the governing body of a county recommends in writing to the Department of
74 Transportation that any street in the county be taken into and become a part of the secondary system of
75 the state highways in such county, the Department of Transportation thereupon, within the limit of
76 available funds and the mileage available in such county for the inclusion of roads and streets in the
77 secondary system, shall take such street into the secondary system of state highways for maintenance,
78 improvement, construction and reconstruction if such street, at the time of such recommendation, either:
79 (i) has a minimum dedicated width of 40 feet or (ii) in the event of extenuating circumstances as
80 determined by the Commonwealth Transportation Commissioner, such street has a minimum dedicated
81 width of 30 feet at the time of such recommendation. In either case such streets must have easements
82 appurtenant thereto which conform to the policy of the Commonwealth Transportation Board with
83 respect to drainage. After the streets are taken into the secondary system of state highways, the
84 Department shall maintain the same in the manner provided by law.

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

89 1. The local governing body of the county may use a portion of the county's annual secondary
90 highway system construction allocation designated as "rural addition funds" to fund the qualifying rural
91 addition costs for qualifying streets if the county agrees to contribute from county revenue or the special
92 assessment of the landowners on the street in question one-half of the qualifying rural addition cost to
93 bring the streets up to the necessary minimum standards for acceptance. No such special assessment of
94 landowners on such streets shall be made unless the governing body of the county receives written
95 declarations from the owners of 75 percent or more of the platted parcels of land abutting upon such
96 street stating their acquiescence in such assessments. The basis for such special assessments, at the
97 option of the local governing body, shall be either (i) the proportion the value of each abutting parcel
98 bears to total value of all abutting parcels on such street as determined by the current evaluation of the
99 property for real estate tax purposes, or (ii) the proportion the abutting road front footage of each parcel
100 abutting the street bears to the total abutting road front footage of all parcels abutting on the street, or
101 (iii) an equal amount for each parcel abutting on such street. No such special assessment on any parcel
102 shall exceed one-third of the current evaluation of such property for real estate tax purposes. Special
103 assessments under this section shall be conducted in the manner provided in Article 2 (§ 15.2-2404 et
104 seq.) of Chapter 24 of Title 15.2, mutatis mutandis, for assessments for local improvements.

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

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

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

119 5. The local governing body of the county may permit one or more of the landowners on the street
120 in question to pay to the county a sum equal to one-half of the qualifying rural addition cost to bring
121 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 county 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

183 be undertaken with the prior concurrence of the Department of Transportation, and the Department shall
184 reimburse the county for expenses incurred in carrying out these activities. Such reimbursement shall be
185 derived from primary or secondary highway funds which the county may be entitled to under the
186 provisions of this chapter. The county may undertake these activities in accordance with all applicable
187 county procedures, provided the Commissioner finds that those county procedures are substantially
188 similar to departmental procedures and specifications.

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

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