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HOUSE BILL NO. 5091

Offered September 18, 2006

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 33.1-391.12, 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.

Patron—Wardrup

Referred to Committee on Transportation

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 33.1-391.12, 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 [Repealed.]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.

9. Concession payments paid to the Commonwealth by a private entity pursuant to the Public-Private Transportation Act of 1995 (§ 56-556 et seq.).

§ 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.

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

63 § 33.1-288. Use of certain funds by Board.

64 The Board may, in its discretion, use any part of funds available for the construction of state
65 highways, in any construction district in which any project authorized for toll revenue bond financing by
66 the Commonwealth Transportation Board as described in § 33.1-268 or by the Richmond Metropolitan
67 Authority as described by § 33.1-320 is wholly or partly located, to aid in the payment of the cost of
68 such projects and for the payment, purchase or redemption of revenue bonds issued in connection with
69 any such project, or in connection with any such project and any one or more other projects. The Board
70 may also, in its discretion, use any part of funds available for the maintenance of state highways, in any
71 construction district in which any such project is wholly or partly located, to provide for the operation,
72 maintenance and repair of any such project and for the payment of interest on revenue bonds issued in
73 connection with any such project, or in connection with any such project and any one or more other
74 projects; ~~provided further, the Commonwealth Transportation Board may, in its discretion, use funds~~
75 ~~under the terms of this section for the emergency operation, maintenance and repair of the project of the~~
76 ~~Chesapeake Bay Bridge and Tunnel Commission as described by § 33.1-253 in the event of damage to~~
77 ~~the bridge under a repayment agreement approved by the bond trustee, and may also pay to the~~
78 ~~Chesapeake Bay Bridge and Tunnel Commission, for aid in the maintenance of the project, the same~~
79 ~~amounts authorized by § 33.1-41.1 for payments for maintenance to certain incorporated towns and~~
80 ~~cities.~~

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

88 CHAPTER 10.2.

89 HAMPTON ROADS BRIDGE AND TUNNEL AUTHORITY.

90 § 33.1-391.6. Short title.

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

93 § 33.1-391.7. Authority created.

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

97 § 33.1-391.8. Powers of Authority.

98 *The Authority shall be responsible for the operation and maintenance of the following bridges and*
99 *tunnels:*

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

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

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

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

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

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

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

113 *The Authority may impose and collect tolls in amounts established by the Authority for the use of*
114 *any or all of the facilities listed in this section. The amount of any such toll may be varied from facility*
115 *to facility, by lane, by time of day, and by day of the week, vehicle type, weight, number of axles, size,*
116 *or some combination thereof. The Authority's ability to impose tolls for use of the Chesapeake Bay*
117 *Bridge-Tunnel shall be subject to requirements of any bond indenture, trust agreement, contract, or*
118 *resolution applicable to any tolls for use of that facility imposed immediately prior to July 1, 2007.*

119 § 33.1-391.9. Authority a responsible public entity under Public-Private Transportation Act of 1995.

120 *The Authority is a responsible public entity as defined in the Public-Private Transportation Act of*

1995 (§ 56-556 et seq.) for any project under its purview.

§ 33.1-391.10. Creation of Authority; local governing body participation and public hearing.

The Authority shall be composed of representatives of local governing bodies as outlined in § 33.1-391.11, except that prior to the creation of the Authority, each local governing body shall conduct a public hearing at a regularly scheduled meeting of that body for the purpose of allowing public comment on the locality's participation in the Authority. Following such hearing, the local governing body shall vote on its participation in the Authority. A majority vote of the members of the local governing body shall be required to approve such participation. Any local governing body that shall have failed, prior to January 1, 2007, to vote on participation in the Authority as provided in this section, shall be deemed to have voted to approve such participation. The Authority shall be deemed to have been created upon the affirmative vote of six or more local governing bodies as provided in this section.

§ 33.1-391.11. Composition of Authority; chairman and vice-chairman; quorum.

The Authority shall consist of 13 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, (x) the Virginia Department of Transportation's district administrator for the Hampton Roads highway construction district, (xi) two members of the Virginia House of Delegates who reside in different counties or cities embraced by the Authority, appointed by the Speaker of the House, and (xii) one member of the Senate of Virginia who resides in a county or city embraced by the Authority, appointed by the Senate Committee on Rules. Members shall serve coincident with their terms of office as members of the House of Delegates and the Senate. Members may be reappointed for successive terms. 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 by 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.

§ 33.1-391.12. 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;

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

185 6. To acquire real and personal property or any interest therein by purchase, lease, gift, or
186 otherwise, and to hold, encumber, sell, or otherwise dispose of such land or interest, for purposes
187 consistent with this chapter and the provisions of § 33.1-422;

188 7. To construct or acquire, by purchase, lease, contract, or otherwise, highways, bridges, tunnels,
189 railroads and rail facilities and other transportation-related facilities in the manner and to the extent
190 not inconsistent with the provisions of § 33.1-422;

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

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

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

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

202 12. To serve as the governing body of the Chesapeake Bay Bridge and Tunnel District created
203 pursuant to Chapter 693 of the Acts of Assembly of 1954, as amended, and incorporated by reference as
204 § 33.1-253.

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

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

210 **3. That no provision of this act shall be so construed as to infringe any bond indenture, trust**
211 **agreement, resolution or contract associated with any bonds or other financial obligations entered**
212 **into by the Chesapeake Bay Bridge and Tunnel Commission or the Chesapeake Bay Bridge and**
213 **Tunnel District prior to July 1, 2007, and any and all financial obligations of the Chesapeake Bay**
214 **Bridge and Tunnel Commission or the Chesapeake Bay Bridge and Tunnel District entered into**
215 **prior to July 1, 2007, shall, on and after July 1, 2007, be deemed to be obligations of the Hampton**
216 **Roads Transportation Authority established by this act. Subject to the requirements of any bond**
217 **indenture, trust agreement, resolution, or contract relating to outstanding bonds of the**
218 **Commission or the District, revenues of the Commission or the District shall be transferred to the**
219 **Authority for any of the purposes of the Authority.**

220 **4. That the staff of the Hampton Roads Planning District Commission, Chesapeake Bay Bridge**
221 **and Tunnel Commission, and the Virginia Department of Transportation shall work cooperatively**
222 **to assist the proper formation and effective organization of the Hampton Roads Bridge and**
223 **Tunnel Authority. Until such time as the Hampton Roads Bridge and Tunnel Authority is fully**
224 **established, the staff of the Hampton Roads Planning District Commission shall serve as its staff,**
225 **and its office facilities shall be used by the Hampton Roads Bridge and Tunnel Authority. The**
226 **Authority shall pay the costs of such staff and office facilities as appropriate.**

227 **5. That the Commonwealth Transportation Board shall continue to allocate sufficient funding to**
228 **and the Department of Transportation shall perform or caused to be performed all maintenance**
229 **and operation of such bridges and tunnels enumerated in § 33.1-391.8 of the Code of Virginia,**
230 **except that funding for the maintenance and operation of the Chesapeake Bay Bridge-Tunnel shall**
231 **be derived from revenues generated by such facility.**