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HOUSE BILL NO. 1886

Offered January 10, 2007

Prefiled January 4, 2007

A BILL to amend and reenact §§ 33.1-67, 33.1-69, and 33.1-72.1 of the Code of Virginia, relating to taking streets into the state secondary highway system.

 Patron—Marshall, R.G.

 Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-67, 33.1-69, and 33.1-72.1 of the Code of Virginia are amended and reenacted as follows:

§ 33.1-67. Secondary system of highways.

A. The secondary system of state highways shall consist of all of the public roads, causeways, bridges, landings and wharves in the several counties of the Commonwealth not included in the State Highway System, including such roads and community roads leading to and from public school buildings, streets, causeways, bridges, landings and wharves in incorporated towns having 3,500 inhabitants or less according to the census of 1920, and in all towns having such a population incorporated since 1920, as constitute connecting links between roads in the secondary system in the several counties and between roads in the secondary system and roads in the primary system of the state highways, not, however, to exceed two miles in any one town. If in any such town, which is partly surrounded by water, less than two miles of the roads and streets therein constitute parts of the secondary system of state highways, the Commonwealth Transportation Board shall, upon the adoption of a resolution by the council or other governing body of such town designating for inclusion in the secondary system of state highways certain roads and streets in such town not to exceed a distance of two miles, less the length of such roads and streets in such town which constitute parts of the secondary system of state highways, accept and place in the secondary system of state highways such additional roads and streets.

B. Notwithstanding the foregoing provisions of this section, any local ordinance, or any provision of Title 15.2, on and after July 1, 2007, no street or road or any portion thereof in any county shall be taken into the state secondary highway system for maintenance purposes unless it is within an area under the control of a homeowners' association. However, nothing in this subsection shall be construed as requiring or permitting the levying of any fee, charge, or assessment, however denominated, by any homeowners' association on any member of the association for the purpose of maintaining, repairing, constructing, or reconstructing any street or road or portion thereof. The county in which they are located shall be responsible for streets and roads not taken into the state secondary highway system.

§ 33.1-69. Control, supervision and management.

A. The control, supervision, management and jurisdiction over the secondary system of state highways shall be vested in the Department of Transportation and the maintenance and improvement, including construction and reconstruction, of such secondary system of state highways shall be by the Commonwealth under the supervision of the Commonwealth Transportation Commissioner. The boards of supervisors or other governing bodies of the several counties and the county road board or county road commission of any county operating under a county road board or county road commission shall have no control, supervision, management and jurisdiction over such public roads, causeways, bridges, landings and wharves, constituting the secondary system of state highways. Except as otherwise provided in this article, the Commonwealth Transportation Board shall be vested with the same powers, control and jurisdiction over the secondary system of state highways in the several counties and towns of the Commonwealth, and such additions as may be made from time to time, as were vested in the boards of supervisors or other governing bodies of the several counties or in the county road board or county road commission in any county operating under a county road board or county road commission on June 21, 1932, and in addition thereto shall be vested with the same power, authority and control as to the secondary system of state highways as is vested in the Board in connection with the State Highway System.

B. Notwithstanding the foregoing provisions of this section, any local ordinance, or any provision of Title 15.2, on and after July 1, 2007, no street or road or any portion thereof in any county shall be taken into the state secondary highway system for maintenance purposes unless it is within an area under the control of a homeowners' association. However, nothing in this subsection shall be construed as requiring or permitting the levying of any fee, charge, or assessment, however denominated, by any

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59 *homeowners' association on any member of the association for the purpose of maintaining, repairing,*
60 *constructing, or reconstructing any street or road or portion thereof. The county in which they are*
61 *located shall be responsible for streets and roads not taken into the state secondary highway system.*

62 § 33.1-72.1. Taking certain streets into secondary system.

63 A. "Street," as used in this section, means a street or highway shown on a plat which was recorded
64 or otherwise opened to public use prior to July 1, 1992, at which time it was open to and used by motor
65 vehicles, and which, for any reason, has not been taken into the secondary system of state highways and
66 serves at least three families per mile.

67 B. "County," as used in this section, means a county in which the secondary system of the state
68 highways is constructed and maintained by the Department of Transportation and which has adopted a
69 local ordinance for control of the development of subdivision streets to the necessary standards for
70 acceptance into the secondary system.

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

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

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

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

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

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

118 3. The local governing body of any county may use revenues derived from the sale of bonds to
119 finance the construction of rural additions to the secondary system of such county. In addition, from the
120 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 § 33.1-23.05. 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 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 § 33.1-23.05.

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.

J. Notwithstanding the foregoing provisions of this section, any local ordinance, or any provision of Title 15.2, on and after July 1, 2007, no street or road or any portion thereof in any county shall be taken into the state secondary highway system for maintenance purposes unless it is within an area under the control of a homeowners' association. However, nothing in this subsection shall be construed as requiring or permitting the levying of any fee, charge, or assessment, however denominated, by any homeowners' association on any member of the association for the purpose of maintaining, repairing, constructing, or reconstructing any street or road or portion thereof. The county in which they are located shall be responsible for streets and roads not taken into the state secondary highway system.