

076352536

HOUSE BILL NO. 1999

Offered January 10, 2007

Prefiled January 8, 2007

A *BILL to amend and reenact §§ 33.1-23.03:1, 33.1-223.2:12, 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 creation of the Hampton Roads Bridge and Tunnel Authority; transferring to the Authority responsibility for the operation and maintenance of the James River Bridge, the Monitor-Merrimac Memorial Bridge-Tunnel, the Hampton Roads Bridge-Tunnel, the Midtown Tunnel, the Downtown Tunnel, the Interstate Route 64 bridge in Chesapeake, and the Chesapeake Bay Bridge-Tunnel; authorizing the Authority to impose and collect tolls for use of those facilities; and requiring use of certain technologies in connection with toll collections.*

Patron—Suit

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-23.03:1, 33.1-223.2:12, 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 [Repealed.]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.).

§ 33.1-223.2:12. Tolls may vary to encourage travel during off-peak hours; certain toll facilities to be fully electronic.

A. In order to provide an incentive for motorists to travel at off-peak hours, *and in accordance with federal requirements*, wherever a toll is imposed and collected by the Department or such other entity as may be responsible for imposing or collecting such toll, the amount of such toll may vary according to the time of day, day of the week, traffic volume, vehicle speed, vehicle type, or ~~any or all of these~~ *similar variables or combinations thereof*. The amount of such toll and the time of day when such toll

INTRODUCED

HB1999

shall change shall be as fixed and revised by the Commonwealth Transportation Board or such other entity as may be responsible for fixing or revising the amount of such toll; provided, however, that any such variation shall be reasonably calculated to minimize the reduction in toll revenue generated by such toll.

B. On or before July 1, 2008, every agency of the Commonwealth or any political subdivision or instrumentality thereof having control of or day-to-day responsibility for the operation of any toll facility in the Commonwealth shall take all necessary actions to ensure that every toll facility under its control is capable of fully automated electronic operation, employing technologies and procedures that permit the collection of tolls from users of the facility without requiring vehicles using the facility to reduce their speed below the speed of traffic on the facility. The provisions of this section shall apply equally to existing facilities and to future construction. The provisions of this section shall also apply to any nongovernmental or quasigovernmental entity operating a toll facility under a comprehensive agreement entered into, pursuant to the Public-Private Transportation Act of 1995 (§ 56-556 et seq.), on or after January 1, 2008.

§ 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~~ *its* governing ~~bodies~~ *body* has acted as set forth in subdivision 4 of § 33.1-23.03:1.

§ 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 Metropolitan Authority as described by § 33.1-320 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~~ *However, if* 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. Powers of Authority.

The Authority shall be responsible for the operation, maintenance, improvement, and tolling of the following bridges and tunnels:

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 may impose and collect tolls in amounts established by the Authority for the use of any or all of the facilities listed 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, vehicle type, weight, number of axles, size, or some combination thereof. The Authority's ability to impose tolls for use of the Chesapeake Bay Bridge-Tunnel shall be subject to requirements of any bond indenture, trust agreement, contract, or resolution applicable to any tolls for use of that facility imposed immediately prior to July 1, 2007. Any tolls imposed for the use of any facility, as authorized by this section, shall be used by the Authority exclusively for (i) the maintenance of the facility for the use of which such tolls are collected or (ii) improvements that reduce congestion or enhance the capacity of (a) the facility for the use of which such tolls are collected or (b) other facilities where improvements would reduce congestion or enhance the capacity of the facility for the use of which such tolls are collected.

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

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, 2008, 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 of Delegates, 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

182 years and may be reappointed for one additional term. For the initial appointments only: the members
183 appointed by the City Council of the City of Chesapeake and by the Board of Supervisors of
184 Northampton County shall be appointed a term of one year; those members appointed by the City
185 Council of the City of Hampton and by the Board of Supervisors of Isle of Wight County shall be
186 appointed for terms of two years; those members appointed by the City Council of the City of Newport
187 News and by the City Council of the City of Norfolk shall be appointed for terms of three years; and
188 the remaining members shall be appointed for terms of four years. Any such initial appointment of two
189 years or less shall not count against the term limitation. Vacancies shall be filled by appointment for the
190 unexpired term by the local governing body making the original appointment. The Hampton Roads
191 highway construction district administrator shall serve ex officio without a vote.

192 The Authority shall annually elect from its membership a chairman and vice-chairman, who shall
193 continue to hold such office until their respective successors are elected. A majority of the Authority
194 shall constitute a quorum.

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

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

201 § 33.1-391.12. Additional powers of Authority.

202 The Authority shall have the following powers together with all powers incidental thereto or
203 necessary for the performance of those hereinafter stated:

204 1. To sue and be sued and to prosecute and defend, at law or in equity, in any court having
205 jurisdiction of the subject matter and of the parties;

206 2. To adopt and use a corporate seal and to alter the same at pleasure;

207 3. To procure insurance, participate in insurance plans, and provide self-insurance; however, the
208 purchase of insurance, participation in an insurance plan, or the creation of a self-insurance plan by
209 the Authority shall not be deemed a waiver or relinquishment of any sovereign immunity to which the
210 Authority or its officers, directors, employees, or agents are otherwise entitled;

211 4. To establish bylaws and make all rules and regulations, not inconsistent with the provisions of this
212 chapter, deemed expedient for the management of the Authority's affairs;

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

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

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

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

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

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

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

233 12. To serve as the governing body of the Chesapeake Bay Bridge and Tunnel District created
234 pursuant to Chapter 693 of the Acts of Assembly of 1954, as amended and incorporated by reference as
235 § 33.1-253.

236 Nothing in this section or in § 33.1-391.8 shall be construed to authorize the Authority to impose or
237 collect any tax or fee except for the tolls authorized in § 33.1-391.8, nor shall the provisions of this
238 chapter be construed as permitting the imposition and collection of any tax or fee for the benefit of the
239 Authority by any local government represented on the Authority.

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

242 2. That § 33.1-253 of the Code of Virginia, Chapter 693 of the Acts of Assembly of 1954, as
243 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, are repealed.

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

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

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

6. That when the Hampton Roads Bridge and Tunnel Authority is fully established, the Chesapeake Bay Bridge and Tunnel Commission and its staff shall work cooperatively with the Hampton Roads Bridge and Tunnel Authority and its staff to take such measures as shall be necessary or desirable to effectuate and complete the transfer of all property, structures, staff, employees, equipment, and supplies owned or controlled by the Chesapeake Bay Bridge and Tunnel Commission to the Hampton Roads Bridge and Tunnel Authority. All such transfers shall be completed prior to July 1, 2008.

7. That the Virginia Department of Transportation, on or prior to July 1, 2008, shall submit a written report to the General Assembly on its plans to create opportunities to enhance mobility and free-flowing traffic on Department-controlled toll facilities by embracing technological advances.