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SENATE BILL NO. 1398

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Transportation
on February 5, 2009)

(Patron Prior to Substitute—Senator Norment)

A BILL to amend and reenact §§ 15.2-2232, 33.1-12, and 33.1-23.03 of the Code of Virginia, relating to the Statewide Transportation Plan; transportation corridors.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2232, 33.1-12, and 33.1-23.03 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-2232. Legal status of plan.

A. Whenever a local planning commission recommends a comprehensive plan or part thereof for the locality and such plan has been approved and adopted by the governing body, it shall control the general or approximate location, character and extent of each feature shown on the plan. Thereafter, unless a feature is already shown on the adopted master plan or part thereof or is deemed so under subsection D, no street or connection to an existing street, park or other public area, public building or public structure, public utility facility or public service corporation facility other than a railroad facility or an underground natural gas or underground electric distribution facility of a public utility as defined in subdivision (b) of § 56-265.1 within its certificated service territory, whether publicly or privately owned, shall be constructed, established or authorized, unless and until the general location or approximate location, character, and extent thereof has been submitted to and approved by the commission as being substantially in accord with the adopted comprehensive plan or part thereof. In connection with any such determination, the commission may, and at the direction of the governing body shall, hold a public hearing, after notice as required by § 15.2-2204. *Following the adoption of the Statewide Transportation Plan by the Commonwealth Transportation Board pursuant to § 33.1-23.03, each local government of a locality through which one or more of the designated corridors of statewide significance traverses, shall, at a minimum, note such corridor or corridors on the transportation plan map included in its comprehensive plan for information purposes at the next regular update of the transportation plan map. Prior to the next regular update of the transportation plan map, the local government shall acknowledge the existence of the corridors of statewide significance within the boundaries of the locality.*

B. The commission shall communicate its findings to the governing body, indicating its approval or disapproval with written reasons therefor. The governing body may overrule the action of the commission by a vote of a majority of its membership. Failure of the commission to act within sixty days of a submission, unless the time is extended by the governing body, shall be deemed approval. The owner or owners or their agents may appeal the decision of the commission to the governing body within ten days after the decision of the commission. The appeal shall be by written petition to the governing body setting forth the reasons for the appeal. The appeal shall be heard and determined within sixty days from its filing. A majority vote of the governing body shall overrule the commission.

C. Widening, narrowing, extension, enlargement, vacation or change of use of streets or public areas shall likewise be submitted for approval, but paving, repair, reconstruction, improvement, drainage or similar work and normal service extensions of public utilities or public service corporations shall not require approval unless such work involves a change in location or extent of a street or public area.

D. Any public area, facility or use as set forth in subsection A which is identified within, but not the entire subject of, a submission under either § 15.2-2258 for subdivision or subdivision A 8 of § 15.2-2286 for development or both may be deemed a feature already shown on the adopted master plan, and, therefore, excepted from the requirement for submittal to and approval by the commission or the governing body; provided, that the governing body has by ordinance or resolution defined standards governing the construction, establishment or authorization of such public area, facility or use or has approved it through acceptance of a proffer made pursuant to § 15.2-2303.

E. Approval and funding of a public telecommunications facility by the Virginia Public Broadcasting Board pursuant to Article 12 (§ 2.2-2426 et seq.) of Chapter 24 of Title 2.2 shall be deemed to satisfy the requirements of this section and local zoning ordinances with respect to such facility with the exception of television and radio towers and structures not necessary to house electronic apparatus. The exemption provided for in this subsection shall not apply to facilities existing or approved by the Virginia Public Telecommunications Board prior to July 1, 1990. The Virginia Public Broadcasting Board shall notify the governing body of the locality in advance of any meeting where approval of any such facility shall be acted upon.

F. On any application for a telecommunications facility, the commission's decision shall comply with

60 the requirements of the Federal Telecommunications Act of 1996. Failure of the commission to act on
61 any such application for a telecommunications facility under subsection A submitted on or after July 1,
62 1998, within ninety days of such submission shall be deemed approval of the application by the
63 commission unless the governing body has authorized an extension of time for consideration or the
64 applicant has agreed to an extension of time. The governing body may extend the time required for
65 action by the local commission by no more than sixty additional days. If the commission has not acted
66 on the application by the end of the extension, or by the end of such longer period as may be agreed to
67 by the applicant, the application is deemed approved by the commission.

68 § 33.1-12. General powers and duties of Board, etc.; definitions.

69 The Commonwealth Transportation Board shall be vested with the following powers and shall have
70 the following duties:

71 (1) Location of routes. To locate and establish the routes to be followed by the roads comprising
72 systems of state highways between the points designated in the establishment of such systems. *Such*
73 *routes shall include corridors of statewide significance pursuant to § 33.1-23.03.*

74 (2) Construction and maintenance contracts and activities related to passenger and freight rail and
75 public transportation.

76 (a) To let all contracts to be administered by the Virginia Department of Transportation or the
77 Department of Rail and Public Transportation for the construction, maintenance, and improvement of the
78 roads comprising systems of state highways and for all activities related to passenger and freight rail and
79 public transportation in excess of \$2 million. The Commonwealth Transportation Commissioner shall
80 have authority to let all Virginia Department of Transportation-administered contracts for highway
81 construction, maintenance, and improvements up to \$2 million in value. The Director of the Department
82 of Rail and Public Transportation shall have the authority to let contracts for passenger and freight rail
83 and public transportation improvements up to \$2 million in value. The Commonwealth Transportation
84 Commissioner is authorized to enter into agreements with localities, authorities, and transportation
85 districts to administer projects and to allow those localities, authorities, and transportation districts to let
86 contracts for highway construction, maintenance, and improvements within their jurisdictions. The
87 Director of the Department of Rail and Public Transportation is authorized to enter into agreements with
88 localities, authorities, and transportation districts to administer projects and to allow those localities,
89 authorities, and transportation districts to let contracts for passenger and freight rail and public
90 transportation activities within their jurisdictions. The Commonwealth Transportation Commissioner and
91 the Director of the Department of Rail and Public Transportation shall report on their respective
92 transportation contracting activities at least quarterly to the Board.

93 (b) The Commonwealth Transportation Board may award contracts for the construction of
94 transportation projects on a design-build basis. These contracts may be awarded after a written
95 determination is made by the Commonwealth Transportation Commissioner or the Director of the
96 Department of Rail and Public Transportation, pursuant to objective criteria previously adopted by the
97 Board regarding the use of design-build, that delivery of the projects must be expedited and that it is not
98 in the public interest to comply with the design and construction contracting procedures normally
99 followed. Such objective criteria will include requirements for prequalification of contractors and
100 competitive bidding processes. These contracts shall be of such size and scope to encourage maximum
101 competition and participation by agency prequalified and otherwise qualified contractors. Such
102 determination shall be retained for public inspection in the official records of the Department of
103 Transportation or the Department of Rail and Public Transportation, as the case may be, and shall
104 include a description of the nature and scope of the project and the reasons for the Commissioner's or
105 Director's determination that awarding a design-build contract will best serve the public interest. The
106 provisions of this section shall supersede contrary provisions of subsection D of § 2.2-4303 and
107 § 2.2-4306.

108 (c) For transportation construction projects valued in excess of \$100 million, the Commonwealth
109 Transportation Board shall require that a financial plan be prepared. This plan shall include, but not be
110 limited to, the following: (i) a complete cost estimate for all major project elements; (ii) an
111 implementation plan with the project schedule and cost-to-complete information presented for each year;
112 (iii) identified revenues by funding source available each year to meet project costs; (iv) a detailed
113 cash-flow analysis for each year of the proposed project; and (v) efforts to be made to ensure maximum
114 involvement of private enterprise and private capital.

115 (d) The Commonwealth Transportation Board may award contracts for the provision of equipment,
116 materials, and supplies to be used in construction of transportation projects on a fixed-price basis. Any
117 such contract may provide that the price to be paid for the provision of equipment, materials, and
118 supplies to be furnished in connection with the projects shall not be increased but shall remain fixed
119 until completion of the projects specified in the contracts. Material components of any such contract for
120 annual and multi-year programs, including but not limited to maintenance, may be fixed at the outset of
121 the projects and until completion based on best achievable prices.

(3) Traffic regulations. To make rules and regulations, from time to time, not in conflict with the laws of the Commonwealth, for the protection of and covering traffic on and the use of systems of state highways and to add to, amend or repeal the same.

(4) Naming highways, bridges, and interchanges. To give suitable names to state highways, bridges, and interchanges and change the names of any highways, bridges, or interchanges forming a part of the systems of state highways, except such highways, bridges, or interchanges as have been or may hereafter be named by the General Assembly; provided that the name of living persons shall not be used for such purposes. The Department of Transportation shall place and maintain appropriate signs indicating the names of highways, bridges, and interchanges named by the Board or by the General Assembly. The costs of producing, placing, and maintaining these signs shall be paid by the counties, cities, and towns in which they are located. No name shall be given to any state highway, bridge or interchange by the Commonwealth Transportation Board unless and until the Commonwealth Transportation Board shall have received from the local governing body of the locality within which a portion of the facility to be named is located a resolution of that governing body requesting such naming.

(5) Compliance with federal acts. To comply fully with the provisions of the present or future federal aid acts. The Board may enter into all contracts or agreements with the United States government and may do all other things necessary to carry out fully the cooperation contemplated and provided for by present or future acts of Congress in the area of transportation.

(6) Information and statistics. To gather and tabulate information and statistics relating to transportation and disseminate the same throughout the Commonwealth. In addition, the Commissioner shall provide a report to the Governor, the General Assembly, the Commonwealth Transportation Board, and the public concerning the current status of all highway construction projects in the Commonwealth. This report shall be posted at least four times each fiscal year, but may be updated more often as circumstances allow. The report shall contain, at a minimum, the following information for every project in the Six-Year Improvement Program: (i) project description; (ii) total cost estimate; (iii) funds expended to date; (iv) project timeline and completion date; (v) statement of whether project is ahead of, on, or behind schedule; (vi) the name of the prime contractor; (vii) total expenditures of federal transportation funds in each county and city; (viii) total expenditures of state transportation funds in each county and city; (ix) statewide totals for federal, state, and local funds expended for highways; (x) statewide totals for federal, state, and local funds expended for transit; (xi) total funds expended on intercity passenger and freight rail line and trains; and (xii) total funds expended in each federal and state programmatic category. Use of one or more Internet websites may be used to satisfy this requirement. Project specific information posted on the Internet shall be updated daily as information is available.

(7) Policies and operation of Departments. To review and approve policies and transportation objectives of the Department of Transportation and the Department of Rail and Public Transportation, to assist in establishing such policies and objectives, to oversee the execution thereof, and to report thereon to the Commonwealth Transportation Commissioner and the Director of the Department of Rail and Public Transportation, respectively.

(8) Cooperation with other agencies and local governments.

(a) To cooperate with the federal government, the American Association of State Highway and Transportation Officials and any other organization in the numbering, signing and marking of highways, in the taking of measures for the promotion of highway safety, in research activities, in the preparation of standard specifications, in the testing of highway materials and otherwise with respect to transportation projects.

(b) To offer technical assistance and coordinate state resources to work with local governments, upon their request, in developing sound transportation components for their local comprehensive plans.

(9) Transportation.

(a) To monitor and, where necessary, approve actions taken by the Department of Rail and Public Transportation pursuant to Chapter 10.1 (§ 33.1-391.1et seq.) of this title in order to ensure the efficient and economical development of public transportation, the enhancement of rail transportation, and the coordination of such rail and public transportation plans with highway programs.

(b) To coordinate the planning for financing of transportation needs, including needs for highways, railways, seaports, airports, and public transportation and to set aside funds as provided in § 33.1-23.03:1. To allocate funds for these needs pursuant to §§ 33.1-23.1and 58.1-638, the Board shall adopt a Six-Year Improvement Program of anticipated projects and programs by July 1 of each year. This program shall be based on the most recent official Transportation Trust Fund revenue forecast and shall be consistent with a debt management policy adopted by the Board in consultation with the Debt Capacity Advisory Committee and the Department of the Treasury.

(c) To recommend to the General Assembly for their consideration at the next session of the General Assembly, objective criteria to be used by the Board in selecting those transportation projects to be

183 advanced from the feasibility to the construction stage. If such criteria are enacted into law, such
184 objectives shall apply to the interstate, primary, and urban systems of highways.

185 (d) To enter into contracts with local districts, commissions, agencies, or other entities created for
186 transportation purposes.

187 (e) To promote increasing private investment in Virginia's transportation infrastructure, including but
188 not limited to acquisition of causeways, bridges, tunnels, highways, and other transportation facilities.

189 (10) Contracts with other states. To enter into all contracts with other states necessary for the proper
190 coordination of the location, construction, maintenance, improvement, and operation of transportation
191 systems, including the systems of state highways with the highways of such other states and, where
192 necessary, to seek the approval of such contracts by the Congress of the United States.

193 (11) Use of funds. To administer, distribute, and allocate funds in the Transportation Trust Fund as
194 provided by law. The Commonwealth Transportation Board shall ensure that the total funds allocated to
195 any highway construction project are equal to total expenditures within 12 months following completion
196 of the project. However, this requirement shall not apply to debt service apportionments pursuant to
197 § 33.1-23.3 or 33.1-23.4.

198 (12) Financial and investment advisors. With the advice of the Secretary of Finance and the State
199 Treasurer, to engage a financial advisor and investment advisor who may be anyone within or without
200 the government of the Commonwealth, to assist in planning and making decisions concerning the
201 investment of funds and the use of bonds for transportation purposes. The work of these advisors shall
202 be coordinated with the Secretary of Finance and the State Treasurer.

203 (13) The powers of the Virginia Aviation Board set out in Chapter 1 (§ 5.1-1 et seq.) of Title 5.1 and
204 the Virginia Port Authority set out in Chapter 10 (§ 62.1-128 et seq.) of Title 62.1 are in no way
205 diminished by the provisions of this title.

206 (14) To enter into payment agreements with the Treasury Board related to payments on bonds issued
207 by the Commonwealth Transportation Board.

208 (15) Outdoor theaters. By regulation:

209 (a) To prevent the erection of moving picture screens of outdoor theaters in such a manner as to be
210 ordinarily visible from any highway;

211 (b) To require that a sufficient space is left between any highway and the entrance to any outdoor
212 theater to prevent congestion on the highway; and

213 (c) To require that outdoor theater entrances and exits are adequately lighted and marked.

214 The term "public transportation" or "mass transit" as used in this title means passenger transportation
215 by rubber-tired, rail, or other surface conveyance which provides shared ride services open to the general
216 public on a regular and continuing basis. The term does not include school buses; charter or sight-seeing
217 service; vehicular ferry service that serves as a link in the highway network; or human service agency or
218 other client-restricted transportation.

219 (16) Establishment of highway user fees for the systems of state highways. When the traffic-carrying
220 capacity of any system of state highways or a portion thereof is increased by construction or
221 improvement, the Commonwealth Transportation Board may enter into agreements with localities,
222 authorities, and transportation districts to establish highway user fees for such system of state highways
223 or portion thereof that the localities, authorities, and transportation districts maintain.

224 § 33.1-23.03. Board to develop and update Statewide Transportation Plan.

225 A. The Commonwealth Transportation Board shall conduct a comprehensive review of statewide
226 transportation needs in a Statewide Transportation Plan setting forth an inventory of all construction
227 needs for all systems, and based upon this inventory, establishing goals, objectives, and priorities
228 covering a twenty-year planning horizon, in accordance with federal transportation planning
229 requirements. This plan shall embrace all modes of transportation and include technological initiatives.

230 B. This Statewide Transportation Plan shall be updated as needed, but no less than once every five
231 years. The plan shall promote economic development and all transportation modes, intermodal
232 connectivity, environmental quality, accessibility for people and freight, and transportation safety. The
233 plan shall include quantifiable measures and achievable goals relating to, but not limited to, congestion
234 reduction and safety, transit and high-occupancy vehicle facility use, job-to-housing ratios, job and
235 housing access to transit and pedestrian facilities, air quality, and per capita vehicle miles traveled. The
236 Board shall consider such goals in evaluating and selecting transportation improvement projects. The
237 plan shall incorporate the approved long-range plans' measures and goals developed by the Northern
238 Virginia Transportation Authority and the Hampton Roads Transportation Authority. Each such plan
239 shall be summarized in a public document and made available to the general public upon presentation to
240 the Governor and General Assembly.

241 C. *Subject to compliance with applicable federal regulations, the Commonwealth Transportation*
242 *Board shall establish a plan for identification and acquisition of rights-of-way that may be needed*
243 *within the corridors designated on the Statewide Transportation Plan.*

244 D. It is the intent of the General Assembly that this plan assess transportation needs and assign

245 priorities to projects on a statewide basis, avoiding the production of a plan which is an aggregation of
246 local, district, regional, or modal plans. *To that end, such plan shall include corridors of statewide*
247 *significance. Such corridors shall be planned to include multimodal transportation improvements, and*
248 *the plan shall consider corridor location in planning for any major transportation infrastructure,*
249 *including environmental impacts and the comprehensive land use plan of the locality in which the*
250 *corridor is planned in the designation of such corridors. The Commonwealth Transportation Board shall*
251 *not be constrained by local, district, regional, or modal plans, including the necessity to be shown on*
252 *the adopted master plan, or part thereof, as approved by a local governing body pursuant to*
253 *§ 15.2-2232.*

254 **2. That the Commonwealth Transportation Board shall conduct public hearings as it deems**
255 **appropriate in order to prepare the Statewide Transportation Plan.**

256 **3. That the designation of the transportation corridors under this act shall be in sufficient detail so**
257 **that the local jurisdictions can place them on their comprehensive plans.**

258 **4. That, subject to compliance with federal and state law and regulations and the allocation of**
259 **funds, once the corridors are established, the Commonwealth shall begin the appropriate**
260 **environmental studies in order to determine the required mitigation, if any, and such information**
261 **can be used in a program to invite possible construction of the facility through a public-private**
262 **partnership. The development of environmental studies shall be prioritized by corridor, based on**
263 **criteria established by the Commonwealth Transportation Board.**