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SENATE BILL NO. 836

Offered January 14, 2009

Prefiled December 19, 2008

A BILL to amend and reenact § 33.1-23.03:4 of the Code of Virginia, relating to the Toll Facilities Revolving Account.

 Patron—Lucas

 Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:**1. That § 33.1-23.03:4 of the Code of Virginia is amended and reenacted as follows:**

§ 33.1-23.03:4. Toll Facilities Revolving Account.

A. Subject to any obligations to existing bondholders, but notwithstanding §§ 2.2-1806 and 58.1-13, funds deposited into the Transportation Trust Fund pursuant to subdivision 4 of § 33.1-23.03:1 shall be held in a separate subaccount to be designated the "Toll Facilities Revolving Account," hereinafter referred to as "the Account," together with all interest, dividends, and appreciation which accrue to the Transportation Trust Fund and which are not otherwise specifically directed by law or reserved by the Board in the resolution authorizing issuance of bonds to finance toll facilities. In addition, any funds received from the federal government or any agency or instrumentality thereof that, pursuant to federal law, may be made available, as loans or otherwise, to private persons or entities for transportation purposes, hereinafter referred to as "federal funds," shall be deposited in a segregated subaccount within the Account. Payments received with respect to any loan made from such segregated subaccount pursuant to subdivision 2 of subsection B of this section shall also be deposited into such segregated subaccount in the Account.

A1. User fees collected in excess of the annual debt service, operations and maintenance expenses, and necessary administrative costs including any obligations to the Toll Facilities Revolving Account and any other obligations for qualifying facilities with respect to which an agency of the Commonwealth is the Responsible Public Entity under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) shall be deposited and held in the "Regional Toll Facilities Revolving Subaccount," hereinafter referred to as the "Regional Account," together with all interest, dividends and appreciation for use within the metropolitan planning organization region within which the facility exists. Payments received with respect to any loan made from such Regional Account pursuant to subdivision 3 of subsection B of this section shall also be deposited into the Regional Account.

B. The Board may make allocations upon such terms and subject to such conditions as the Board deems appropriate, from the following funds for the following purposes:

1. From any funds in the Account, exclusive of those in the Regional Account, to pay or finance all or part of the costs, including the cost of planning, operation, maintenance, and improvements incurred in connection with the acquisition and construction of projects financed in whole or in part as toll facilities or to refinance existing toll facilities, provided that any such funds allocated from the Account for a planned or operating toll facility shall be considered as an advance of funding for which the Account shall be reimbursed;

2. From funds in the segregated subaccount in the Account into which federal funds are deposited in conjunction with the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) and pursuant to the terms of a comprehensive agreement between a responsible public entity and a private operator as provided for in that act:

a. To make a loan to such operator to pay any cost of a qualifying transportation facility, provided that: (i) the operator's return on its investment is limited to a reasonable rate and (ii) such loan is limited to a reasonable term; or

b. To pay the Commonwealth's or its agency's portion of costs incurred or to be incurred in accordance with a comprehensive agreement with respect to a transportation facility.

All definitions of terms shall be as provided in the Public-Private Transportation Act of 1995;

3. From funds in the Regional Account:

a. To pay or finance all or part of the costs, including the cost of planning, operation, maintenance, and improvements incurred in connection with the acquisition and construction of projects financed in whole or in part as toll facilities or to refinance existing toll facilities, provided that (i) allocations from the Regional Account shall be limited to projects located within the same metropolitan planning organization region as the facility which generated the excess revenue and (ii) any such funds allocated from the Regional Account for a planned or operating toll facility shall be considered as an advance of

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SB836

59 funding for which the Regional Account shall be reimbursed; or

60 b. To pay the Commonwealth's, its agency's, or its political subdivision's costs incurred or to be
61 incurred in accordance with a comprehensive agreement with respect to a transportation facility within
62 the same metropolitan planning organization region as the facility which generated the excess revenue.
63 All definitions of terms shall be as provided in the Public-Private Transportation Act of 1995; and

64 4. From any funds in the Account or Regional Account, to pay the Board's reasonable costs and
65 expenses incurred in (i) the administration and management of the Account, (ii) its program of financing
66 or refinancing costs of toll facilities, and (iii) the making of loans and paying of costs described in
67 subdivisions 1 and 2 of this subsection.

68 C. The Board may transfer from the Account to the Transportation Trust Fund for allocation pursuant
69 to subsection B of § 33.1-23.1 any interest revenues and, subject to applicable federal limitations, federal
70 funds not committed by the Board to the purposes provided for in subsection B of this section.

71 D. Any balance remaining on any loan issued to a political subdivision from funds in the Account
72 shall either be repaid in full or assumed as a loan issued pursuant to this section by any private entity
73 who enters into a comprehensive agreement with a responsible public entity for construction of a
74 qualifying transportation facility if:

75 1. The comprehensive agreement authorizes the issuance of tolls on a portion of the qualifying
76 transportation facility;

77 2. The qualifying transportation facility is included in the same Record of Decision or Revised
78 Record of Decision issued by the Federal Highway Administration as that issued for the project financed
79 by the loan;

80 3. No tolls were imposed upon completion of construction of the project financed by the loan; and

81 4. The political subdivision pledged to repay the loan from its annual allocation of construction
82 funds for urban system highways as authorized by the Board.

83 Repayment or assumption of a loan balance by a private entity pursuant to this subdivision shall
84 occur within 60 days of the effective date of the applicable comprehensive agreement.

85 All definitions of terms shall be as provided in the Public-Private Transportation Act of 1995
86 (§ 56-556 et seq.).

87 DE. The provisions of this section shall be liberally construed to the end that its beneficial purposes
88 may be effectuated. Insofar as this provision is inconsistent with the provisions of any other general,
89 special, or local law, this provision shall be controlling.

90 EF. If any provision of this section or the application thereof to any person or circumstances is held
91 invalid by a court of competent jurisdiction, invalidity shall not affect other provisions or applications of
92 this section that can be given effect without the invalid provision or application, and to this end the
93 provisions of this section are declared to be severable.