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**SENATE BILL NO. 864**

Offered January 14, 2009

Prefiled December 29, 2008

*A BILL to amend and reenact § 2.2-2101, as it is currently effective and as it shall become effective, and § 33.1-221.1:1.1 of the Code of Virginia; to amend the Code of Virginia by adding in Title 33.1 a chapter numbered 10.1:1, consisting of sections numbered 33.1-391.5:1 through 33.1-391.5:5; and to repeal § 33.1-391.3:1 of the Code of Virginia and Chapter 1041 of the Acts of Assembly of 2003, relating to the Rail Transportation Development Authority and the Rail Advisory Board.*

Patrons—Edwards and Reynolds

Referred to Committee on Transportation

Whereas, the General Assembly has determined that the transportation of freight and passengers by rail frequently provides a less expensive, safer, and more environmentally friendly alternative to the construction of additional highways; and

Whereas, hundreds of miles of railroads in the Commonwealth have been abandoned and dismantled within the past 50 years, and hundreds of additional miles of railroad tracks are currently in poor repair, are poorly utilized, and are threatened with abandonment; and

Whereas, improvements and repairs to rail equipment and infrastructure can, in many circumstances, reduce or eliminate the cost to the public of highway construction and can also reduce accidents, traffic congestion, fuel consumption, and air and water pollution; and

Whereas, the railroad companies that own most of the railroad infrastructure in the Commonwealth do not have the financial ability to make all of the repairs and improvements to rail infrastructure that may be in the public interest; and

Whereas, there is a clear public need to provide a mechanism for identifying improvements and repairs to the Commonwealth's rail infrastructure that are clearly in the public interest and for assisting in the financing of such repairs; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

**1. That § 2.2-2101, as it is currently effective and as it shall become effective, and § 33.1-221.1:1.1 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 10.1:1, consisting of sections numbered 33.1-391.5:1 through 33.1-391.5:5, as follows:**

§ 2.2-2101. (Effective until July 1, 2013) Prohibition against service by legislators on boards, commissions, and councils within the executive branch; exceptions.

Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils within the executive branch of state government who are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board, commission, or council in the executive branch of state government that is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position.

The provisions of this section shall not apply to members of the *Rail Transportation Development Authority*, the Board for Branch Pilots, who shall be appointed as provided for in § 54.1-901; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.3; to members of the Board of Trustees of the Southern Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.25; to members of the Board of Directors of the New College Institute who shall be appointed as provided for in § 23-231.31; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in § 2.2-5204; to members of the Board of Veterans Services, who shall be appointed as provided for in § 2.2-2452; to members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § 23-231.15; to members of the Commonwealth Competition Commission, who shall be appointed as provided for in § 2.2-2621; to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in § 2.2-2423; to members of the Advisory Commission on the Virginia Schools for the Deaf and the Blind, who shall be appointed as provided for in § 22.1-346.1; to members of the Substance Abuse Services Council, who shall be appointed as provided for in § 2.2-2696; to members of the Criminal Justice Services Board, who shall be appointed as provided for in § 9.1-108; to members of the Council on Virginia's Future, who shall be appointed as

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provided for in § 2.2-2685; to members of the State Executive Council for Comprehensive Services for At-Risk Youth and Families, who shall be appointed as provided in § 2.2-2648; to members of the Virginia Workforce Council, who shall be appointed as provided for in § 2.2-2669; to members of the Commission on Civics Education, who shall be appointed as provided for in § 22.1-212.18; to members of the Volunteer Firefighters' and Rescue Squad Workers' Service Award Fund Board, who shall be appointed as provided for in § 51.1-1201; to members of the Secure Commonwealth Panel, who shall be appointed as provided for in § 2.2-306; to members of the Forensic Science Board, who shall be appointed as provided for in § 9.1-1109; or to members of the Southwest Virginia Cultural Heritage Commission, who shall be appointed as provided in § 2.2-2533.

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§ 33.1-221.1:1.1. Rail Enhancement Fund.

A. The General Assembly declares it to be in the public interest that railway preservation and development of railway transportation facilities are an important element of a balanced transportation system of the Commonwealth for freight and passengers and further declares it to be in the public interest that the retention, maintenance, improvement and development of the railways are essential to the Commonwealth's continued economic growth, vitality, and competitiveness in national and world markets, and there is hereby created in the state treasury a special nonreverting fund to be known as the Rail Enhancement Fund which shall be considered a special fund within the Transportation Trust Fund, hereafter referred to as "the Fund."

B. The Fund shall be established on the books of the Comptroller, and shall consist of dedications pursuant to § 58.1-2425 and such funds from other sources as may be set forth in the appropriation act and shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely as provided in this section. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the Virginia Department of Rail and Public Transportation or the Director's designee.

C. The Director of the Department of Rail and Public Transportation shall administer and expend or

commit, subject to the approval of the Commonwealth Transportation Board, the Fund for acquiring, leasing, and/or improving railways or railroad equipment, rolling stock, rights-of-way or facilities, or assisting other appropriate entities to acquire, lease, or improve railways or railroad equipment, rolling stock, rights-of-way or facilities, for freight and/or passenger rail transportation purposes whenever the Board shall have determined that such acquisition, lease, and/or improvement is for the common good of a region of the Commonwealth or the Commonwealth as a whole. Prior to recommending an allocation of the Fund to the Commonwealth Transportation Board, the Director of the Department of Rail and Public Transportation shall consult with and obtain the advice and recommendations of the Rail Advisory Board Transportation Development Authority established pursuant to § 33.1-391.3:1 Chapter 10.1:1 (§ 33.1-391.5:1 et seq.).

D. Projects undertaken pursuant to this section shall be limited to those the Commonwealth Transportation Board shall have determined will result in public benefits to the Commonwealth or to a region of the Commonwealth that are equal to or greater than the investment of funds under this section. Such projects shall include a minimum of 30 percent cash or in-kind matching contribution from a private source, which may include a railroad, a regional authority, or a local government source, or a combination of such sources.

#### CHAPTER 10.1:1.

##### RAIL TRANSPORTATION DEVELOPMENT AUTHORITY.

§ 33.1-391.5:1. Short title.

*This chapter shall be known and may be cited as the Rail Transportation Development Authority Act.*

§ 33.1-391.5:2. Authority created; purpose.

*There is hereby created a body corporate and a political subdivision of the Commonwealth to be known as the Rail Transportation Development Authority, hereinafter in this chapter known as "the Authority." The Authority shall have the responsibility of identifying needed construction, reconstruction, improvements, repairs, extensions, additions, restorations, and any related acquisitions of real or personal property, of or to rails, tracks, rights-of-way, shops, terminals, bridges, tunnels, rolling stock, signals, and any other equipment, infrastructure, or facilities that are or may be used to provide for the transportation of freight or passengers by rail in the Commonwealth that the Authority determines to be in the public interest, hereinafter referred to as a rail transportation project. In addition to its other powers hereinafter set forth, the Authority shall have the power to finance or assist in financing, from the resources made available to it, any such rail transportation project.*

§ 33.1-391.5:3. Composition of Authority; chairman and vice-chairman; quorum; administrative support services.

*The Authority shall consist of nine voting members appointed by the Governor, subject to confirmation by the General Assembly, who shall serve for terms of four years and may be reappointed for one additional term. Two members shall represent passenger rail interests in the Commonwealth, including high-speed rail, inner-city passenger rail and commuter rail, and the Virginia Railway Express. One member shall represent Class I railroad interests in the Commonwealth, and one member shall represent short line railroad interests in the Commonwealth.*

*For the initial appointments only, four of the appointments may be for terms of two years so as to allow for staggered terms. Such initial two-year terms shall not count against the term limitation. Vacancies shall be filled by gubernatorial appointment for any unexpired term.*

*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. Five members of the authority shall constitute a quorum.*

*The members of the Authority shall be reimbursed their actual and necessary expenses incurred in carrying out their duties and, in addition, shall be paid the same per diem as provided in the general appropriation act for members of the General Assembly engaged in legislative business between sessions.*

*The Virginia Department of Rail and Public Transportation shall provide administrative support services for the Authority.*

§ 33.1-391.5:4. 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;*

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

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

187 6. To issue, in accordance with applicable law, bonds, and other evidences of debt, that shall not be  
188 secured by the full faith and credit of the Commonwealth and shall not constitute tax-supported debt of  
189 the Commonwealth, in order to finance or assist in the financing of rail transportation projects  
190 undertaken under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or any other rail  
191 transportation project in the Commonwealth determined by the Authority to be in the public interest;

192 7. To make loans or grants for purposes that are consistent with this chapter and otherwise to  
193 receive and expend moneys on behalf of the Authority;

194 8. To acquire real and personal property or any interest therein by purchase, lease, gift, or  
195 otherwise, and to hold, encumber, sell, or otherwise dispose of such land or interest, for purposes  
196 consistent with this chapter;

197 9. To construct or acquire, by purchase, lease, contract, or otherwise, rail transportation facilities;

198 10. To enter into agreements or leases with public or private entities for the operation of rail  
199 transportation facilities it has acquired;

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

202 12. To the extent funds are made available to the Authority to do so, to employ employees, agents,  
203 advisors, and consultants through the Department of Rail and Public Transportation, including without  
204 limitation, attorneys, financial advisers, engineers, and other technical advisers and, the provisions of  
205 any other law to the contrary notwithstanding, to determine their duties and compensation;

206 13. To establish and collect fees, charges or other revenue for the use of the property, equipment, or  
207 facilities of the Authority, and to pledge such fees, charges, or other revenues to service debt authorized  
208 under this Act; and

209 14. To the extent not inconsistent with other provisions of this chapter, and without limiting or  
210 restricting the powers otherwise given the Authority, to exercise all the powers given to transportation  
211 district commissions by § 15.2-4518.

212 No provision of this chapter shall be construed as authorizing the Authority to (i) impose fees,  
213 financial obligations, or mandates of any kind on any common carrier freight railroad without the  
214 express consent of the common carrier railroad or (ii) exercise the power of eminent domain.

215 § 33.1-391.5:5. Rail Transportation Plan.

216 The Virginia Department of Rail and Public Transportation, in conjunction with the Authority, shall  
217 develop, publish, advocate, and periodically revise a rail transportation plan for the Commonwealth.  
218 Such plan shall include both freight and passenger components. Such plan shall, to the extent feasible,  
219 be developed and coordinated with the agency charged with rail planning in each of the states adjacent  
220 to the Commonwealth.

221 2. That § 33.1-391.3:1 of the Code of Virginia and Chapter 1041 of the Acts of Assembly of 2003  
222 are repealed.