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HOUSE BILL NO. 1131

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact §§ 33.1-1, 33.1-2, 33.1-23.2, 33.1-23.3, and 33.1-23.4 of the Code of Virginia, relating to composition of the Commonwealth Transportation Board; formulas for allocating highway construction funds to the primary, secondary, and urban highway systems.

Patrons—Kearney and Kory

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-1, 33.1-2, 33.1-23.2, 33.1-23.3, and 33.1-23.4 of the Code of Virginia are amended and reenacted as follows:

§ 33.1-1. State Highway and Transportation Board continued as Commonwealth Transportation Board; number and terms of members; removal from office; vacancies.

The State Highway and Transportation Board, formerly known as the State Highway and Transportation Commission, is continued and shall hereafter be known as the Commonwealth Transportation Board. Wherever either "Commission" or "Board" is used in this title referring to the State Highway and Transportation Board or the State Highway and Transportation Commission, it shall mean the Commonwealth Transportation Board.

The Board shall consist of ~~seventeen~~ 18 members: the Secretary of Transportation, the Commonwealth Transportation Commissioner, the Director of the Department of Rail and Public Transportation, and ~~fourteen~~ 15 citizen members. The citizen members shall be (i) appointed by the Governor as provided in § 33.1-2, (ii) subject to confirmation by the General Assembly, and (iii) removable from office during their respective terms by the Governor at his pleasure. Appointments of citizen members shall be for terms of four years commencing upon July 1, upon the expiration of the terms of the existing members, respectively. The initial terms of the members appointed in January, 1987, shall commence when appointed and shall be for terms ending June 30, 1988, June 30, 1989, and June 30, 1990, respectively. Vacancies shall be filled by appointment by the Governor for the unexpired term and shall be effective until ~~thirty~~ 30 days after the next meeting of the ensuing General Assembly and, if confirmed, thereafter for the remainder of the term. No person shall be eligible to serve more than two successive terms of four years, other than the Secretary of Transportation, the Commonwealth Transportation Commissioner, and the Director of the Department of Rail and Public Transportation. A person heretofore or hereafter appointed to fill a vacancy may serve two additional successive terms.

The Secretary of Transportation shall serve as Chairman of the Board. The Secretary shall have voting privileges only in the event of a tie. The Commonwealth Transportation Commissioner shall serve as Vice-Chairman of the Board. The Commissioner shall have voting privileges only in the event of a tie when he is presiding during the absence of the Chairman. The Director of the Department of Rail and Public Transportation shall serve without a vote.

Whenever in this title and in the Code of Virginia "State Highway Commission" or "State Highway and Transportation Board" is used, it shall mean "Commonwealth Transportation Board"; "State Highway Commissioner" or "State Highway and Transportation Commissioner" shall mean "Commonwealth Transportation Commissioner"; and all references to "Department of Highways and Transportation" shall refer to the Department of Transportation.

§ 33.1-2. Residence requirements; statewide interest.

Of such Board, one member shall be a resident of the territory now included in the Bristol construction district, one in the Salem construction district, one in the Lynchburg construction district, one in the Staunton construction district, one in the Culpeper construction district, one in the Fredericksburg construction district, one in the Richmond construction district, one in the Hampton Roads construction district and ~~one~~ two in the Northern Virginia construction district. The remaining five members shall be appointed from the Commonwealth at large, but at least two shall reside in standard metropolitan statistical areas and be designated as urban at-large members, and at least two shall reside outside standard metropolitan statistical areas and be designated as rural at-large members. The at-large members shall be appointed to represent rural and urban transportation needs and be mindful of the concerns of seaports and seaport users, airports and airport users, railways and railway users, and mass transit and mass transit users. Each member so appointed shall be mindful of the best interest of the Commonwealth at large primarily instead of those of the district from which chosen or of the transportation interest represented.

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HB1131

59 § 33.1-23.2. Allocation of construction funds for primary system and interstate match.

60 A. The Commonwealth Transportation Board shall allocate such funds as are available under
61 § 33.1-23.1 B 1 to the primary system of state highways, including the arterial network, for construction
62 and shall apportion such funds among the nine construction districts so that each construction district
63 shall be allocated a share of such funds equal to the proportion that such construction district bears to
64 the Commonwealth as a whole in terms of: ~~vehicle-miles traveled on the primary system, primary road~~
65 ~~lane mileage and a primary road need factor which adjusts the weights in the allocation formula for the~~
66 ~~construction district with the largest under-allocation relative to primary needs, with vehicle-miles~~
67 ~~traveled weighted seventy percent, primary road lane mileage weighted twenty-five percent, and the~~
68 ~~primary road need factor weighted five percent~~ (i) *population*, (ii) *traffic congestion*, (iii) *ambient air*
69 *quality*, (iv) *functional classifications of highways*, and (v) *other important objectives as determined by*
70 *the Commonwealth Transportation Board, with each such factor being given equal weight.*

71 B. Out of each district's total allocation of primary funds pursuant to paragraph 1 of subsection B of
72 § 33.1-23.1, the Board shall allocate all needed interstate federal-aid matching funds, up to a maximum
73 of ~~twenty-five~~ 25 percent of the district's primary allocation. Any additional interstate federal-aid
74 matching funds needed in a district shall be allocated by the Board from the Interstate Federal-Aid
75 Matching Fund established in § 33.1-23.1:2.

76 C. Notwithstanding subsection A of this section, the Board may provide for exceptionally heavy
77 expenditures for repairs or replacements made necessary by highway damage resulting from accidents,
78 severe weather conditions, acts of God or vandalism.

79 D. Notwithstanding subsection A, the Board may, from funds available under subdivision B 1 of
80 § 33.1-23.1, provide funding for the construction of highway projects maintained or to be maintained by
81 a municipality, provided such project involves a component of the National Highway System and such
82 funds are derived from allocations to the highway construction district in which such project is located.
83 Any allocation under this subsection shall not diminish funds allocated or allocable to any such
84 municipality under § 33.1-23.3.

85 E. Such funds allocated to the primary system shall, as far as possible, be allotted prior to the
86 commencement of the fiscal year and public announcement made of such allotment but the Board shall
87 not approve such allotment until after a public hearing at which political subdivisions of the
88 Commonwealth and interested citizens may be heard.

89 In any case where any allotment of funds is made under this subsection to any county, all or a part
90 of which subsequently is incorporated as or into a city or town, such allocation shall not be impaired
91 thereby and the funds so allocated shall be expended as if such county or any part thereof had never
92 become an incorporated city, but that portion of such city shall not be eligible to receive funds as a city
93 during the same year it receives the funds allocated as a county or as any part of a county.

94 § 33.1-23.3. Allocation of construction funds for urban system highways.

95 A. Such funds as are allocated to urban highways in (i) all towns that have more than 3,500
96 inhabitants according to the last preceding United States Census, (ii) all towns which, according to
97 evidence satisfactory to the Commonwealth Transportation Board, have attained a population of more
98 than 3,500 since the last preceding United States census, (iii) all incorporated towns which, on June 30,
99 1985, maintained certain streets under § 33.1-80 as then in effect, (iv) all cities regardless of their
100 populations, and (v) the Towns of Wise, Lebanon, and Altavista pursuant to subdivision 2 of subsection
101 B 2 of § 33.1-23.1 shall be apportioned among the cities and towns of this Commonwealth by the
102 Commonwealth Transportation Board in such a manner that each city or town to which these funds are
103 allocable receives the same proportion of total funds available as the population of that city or town
104 bears to the total population of all cities and towns among which such funds are allocable. For the
105 purposes of this section, the term "population" means either the population according to the latest United
106 States census or the latest population estimate of the Center for Public Service, whichever is more recent
107 on the basis of (i) *population*, (ii) *traffic congestion*, (iii) *ambient air quality*, (iv) *functional*
108 *classifications of highways*, and (v) *other important objectives as determined by the Commonwealth*
109 *Transportation Board, with each such factor being given equal weight.* Whenever any city or town
110 qualifies under this section for allocation of funds, such qualification shall continue to apply to such city
111 or town notwithstanding any subsequent changes in population and shall cease to apply only upon the
112 subsequent enactment by the General Assembly of a measure in which the intent is clearly stated. All
113 allocations made prior to July 1, 2001, to cities and towns meeting the criteria above are hereby ratified,
114 validated, and confirmed.

115 B. No apportionment hereunder shall be made to any city or town which does not have an urban
116 project or projects approved by the Commonwealth Transportation Board and in no case shall the
117 apportionment to any city or town exceed the total estimated cost of the project or projects for which
118 funds are allocated. Such funds shall, as far as possible, be allotted prior to the commencement of the
119 fiscal year and public announcement made of such allotment. Any apportionment due but not received
120 by any city or town in a fiscal year for use under this section shall accrue as a credit to such city or

town and be held for its construction projects for five succeeding fiscal years. Funds accrued shall be apportioned prior to any other distribution under this section in the fiscal year requested by the city or town.

A portion of allocations made to any city or town under this section may be used on streets functionally classified as arterial for (i) the purchase of residue parcels or land resulting from highway construction or reconstruction projects where the purchase will result in necessary access control or land use control directly related to the purpose and need for the project, (ii) improvements to traffic safety, (iii) improvement to traffic flow and transportation system use, or any combination of (i), (ii), and (iii). Notwithstanding other provisions of this section, not more than two-thirds of the annual urban system highway funds apportioned to a city or town under this section may be used to reimburse the locality for debt service for bonds or eligible project costs incurred on approved projects included in the Six-Year Improvement Program of the Commonwealth Transportation Board and the city's or town's capital improvement program. Such funds may also be used by the locality for debt service for bonds issued for, or eligible project costs incurred or to be incurred on, approved projects included, at the time such bonds are issued or such costs are incurred or are to be incurred, in the Six-Year Improvement Program of the Commonwealth Transportation Board and the city's or town's capital improvement program. Any such funds so apportioned to and received by such city or town, or any portion thereof, may be deposited in a special fund that shall be established separate and apart from any other funds, general or special.

When the city or town presents a resolution requesting that a portion of its annual urban system apportionment be set aside for reimbursement for, or payment of, debt service under this section for a specific eligible project, the Commonwealth Transportation Board shall, subject to appropriation and allocation, set aside no more than two-thirds of the anticipated annual apportionment of urban system funding to the city or town for such purpose, provided such funds have not been previously committed by the Board for projects contained in the Six-Year Improvement Program.

The setting aside and use of funds under this section for reimbursement for, or payment of, debt service shall be subject to such terms and conditions as may be prescribed by the Commonwealth Transportation Commissioner.

The provisions of this section shall not constitute a debt or obligation of the Commonwealth Transportation Board or the Commonwealth of Virginia.

C. The governing body of any city or town may, with the consent of the Commonwealth Transportation Board, expend urban system highway construction funds allocated annually to the city or town by the Commonwealth Transportation Board for the design, land acquisition, and construction of transportation projects that have been included in the Commonwealth Transportation Board's Six-Year Improvement Program and for the resurfacing, restoration, rehabilitation, reconstruction, and improvement of streets within the city or town for which the city receives maintenance payments under § 33.1-41.1.

D. At the election of each city or town, payment of the funds may be made in equal amounts, one in each quarter of the fiscal year, and shall be reduced, in the case of each city and town, by the amount of federal-aid construction funds credited to each city or town and the amount of funds forecasted to be expended by the Department of Transportation or the Department of Rail and Public Transportation for any project or projects on behalf of the city or town. Those cities or towns who decide to take over the responsibility for their construction program shall notify the Commonwealth Transportation Board by July 1 for implementation the following year.

§ 33.1-23.4. Allocation of construction funds within secondary system.

A. Such funds as are allocated to the secondary system of state highways pursuant to paragraph 3 of subsection B of § 33.1-23.1 shall be apportioned among the several counties in the secondary system by the Commonwealth Transportation Board so that each such county shall be allocated a share of such funds equal to the proportion that such county bears to the Commonwealth as a whole in terms of area and population with population being weighted 80 percent, and area being weighted 20 percent. For the purpose of this section, "area" means the total land area of a county reduced by the area of any military reservations and state or national parks or forests within its boundaries and such other similar areas and facilities of five square miles in area or more, as may be determined by the Commonwealth Transportation Board (i) population, (ii) traffic congestion, (iii) ambient air quality, (iv) functional classifications of highways, and (v) other important objectives as determined by the Commonwealth Transportation Board, with each such factor being given equal weight.

For the purposes of this section, the term "population" shall mean either population according to the latest United States census or the latest population estimate of the Center for Public Service of the University of Virginia, whichever is more recent.

If so requested in a resolution adopted by the local governing body, funds allocated to any county under this section may be used to support primary highway system construction projects within the

182 county.

183 Before allocating funds under the foregoing provisions of this section, the Board may provide for
184 exceptionally heavy expenditures for repairs or replacements made necessary by highway damage
185 resulting from accidents, severe weather conditions, acts of God or vandalism.

186 B. Notwithstanding other provisions of this section, not more than one-third of the annual secondary
187 system highway funds apportioned to a county under this section may be used to reimburse the county
188 for (i) debt service for bonds or (ii) eligible project costs incurred on approved projects included in the
189 county's Secondary Six-Year Plan and the county's capital improvement program. Such funds may also
190 be used by the county for debt service for bonds issued for, or eligible project costs incurred or to be
191 incurred on, approved projects included, at the time such bonds are issued or such costs are incurred or
192 are to be incurred, in the Six-Year Improvement Program of the Commonwealth Transportation Board
193 and the county's capital improvement program. Any such funds so apportioned to and received by such
194 county, or any portion thereof, may be deposited in a special fund that shall be established separate and
195 apart from any other funds, general or special.

196 When a county presents a resolution requesting that a portion of its annual secondary construction
197 allocation be set aside for reimbursement for, or payment of, debt service under this section for a
198 specific eligible project, the Commonwealth Transportation Board shall, subject to appropriation and
199 allocation, set aside no more than one-third of the anticipated annual allocation of secondary system
200 construction funding to the county for such purpose, provided such funds have not been previously
201 committed for projects contained in the county's Secondary Six-Year Plan.

202 The setting aside and use of funds under this section for reimbursement for, or payment of, debt
203 service shall be subject to such terms and conditions as may be prescribed by the Commonwealth
204 Transportation Commissioner.

205 The provisions of this section shall not constitute a debt or obligation of the Commonwealth
206 Transportation Board or the Commonwealth of Virginia.

207 C. In counties having elected to manage the construction program for the secondary system of state
208 highways within the county, in accordance with § 33.1-84.1, payment of funds from the allocation of
209 secondary construction funds for the county may be made in equal amounts, one in each quarter of the
210 fiscal year, and shall be reduced by the amount of federal-aid construction funds credited to each
211 county, which will be reimbursed as qualifying expenditures occur and by the amount of funds forecast
212 by the Department of Transportation and by the Department of Rail and Public Transportation to be
213 expended for any construction project or projects or county-wide activities on behalf of the county or
214 other financial obligations. Those counties that decide to take over the responsibility for the secondary
215 construction program shall notify the Commonwealth Transportation Board by July 1 for implementation
216 the following year. Implementation shall take place as specified in the agreement referenced in
217 § 33.1-84.1.

218 D. The chief administrative officer of counties receiving funds under subsection C of this section
219 shall make annual reports of expenditures to the Department of Transportation in such form as the
220 Commonwealth Transportation Board shall prescribe, accounting for all construction expenditures made
221 from quarterly payments. Such reports shall be included in the scope of the annual audit of each county
222 conducted by independent certified public accountants.