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HOUSE BILL NO. 1758

Offered January 12, 2011

Prefiled January 11, 2011

A BILL to amend and reenact §§ 33.1-23.3, 33.1-70.1, and 33.1-70.2 of the Code of Virginia, relating to local roads.

Patrons—Wilt and Athey

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-23.3, 33.1-70.1, and 33.1-70.2 of the Code of Virginia are amended and reenacted as follows:

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

A. Such funds as are allocated to urban highways in (i) all towns that have more than 3,500 inhabitants according to the last preceding United States Census, (ii) all towns which, according to evidence satisfactory to the Commonwealth Transportation Board, have attained a population of more than 3,500 since the last preceding United States census, (iii) all incorporated towns which, on June 30, 1985, maintained certain streets under § 33.1-80 as then in effect, (iv) all cities regardless of their populations, and (v) the Towns of Wise, Lebanon, and Altavista pursuant to subdivision 2 of subsection B of § 33.1-23.1 shall be apportioned among the cities and towns of this Commonwealth by the Commonwealth Transportation Board in such a manner that each city or town to which these funds are allocable receives the same proportion of total funds available as the population of that city or town bears to the total population of all cities and towns among which such funds are allocable. For the purposes of this section, the term "population" means either the population according to the latest United States census or the latest population estimate of the Center for Public Service, whichever is more recent. Whenever any city or town qualifies under this section for allocation of funds, such qualification shall continue to apply to such city or town notwithstanding any subsequent changes in population and shall cease to apply only upon the subsequent enactment by the General Assembly of a measure in which the intent is clearly stated. All allocations made prior to July 1, 2001, to cities and towns meeting the criteria above are hereby ratified, validated, and confirmed.

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

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59 allocation, set aside no more than two-thirds of the anticipated annual apportionment of urban system
60 funding to the city or town for such purpose, provided such funds have not been previously committed
61 by the Board for projects contained in the Six-Year Improvement Program.

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

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

67 C. The governing body of any city or town may, with the consent of the Commonwealth
68 Transportation Board, expend urban system highway construction funds allocated annually to the city or
69 town by the Commonwealth Transportation Board for the design, land acquisition, and construction of
70 transportation projects that have been included in the Commonwealth Transportation Board's Six-Year
71 Improvement Program and for the resurfacing, restoration, rehabilitation, reconstruction, and
72 improvement of streets within the city or town for which the city receives maintenance payments under
73 § 33.1-41.1.

74 D. At the election of each city or town, payment of the funds may be made in equal amounts, one in
75 each quarter of the fiscal year, and shall be reduced, in the case of each city and town, by the amount
76 of federal-aid construction funds credited to each city or town and the amount of funds forecasted to be
77 expended by the Department of Transportation or the Department of Rail and Public Transportation for
78 any project or projects on behalf of the city or town. Those cities or towns who decide to take over the
79 responsibility for their construction program shall notify the Commonwealth Transportation Board by
80 July 1 December 31 for implementation the following fiscal year.

81 § 33.1-70.1. Requesting Department to hard-surface secondary roads; paving of certain secondary
82 roads within existing rights-of-way; designation as Rural Rustic Road.

83 A. Whenever the governing body of any county, after consultation with personnel of the Department
84 of Transportation, adopts a resolution requesting the Department of Transportation to hard-surface any
85 secondary road in such county that carries 50 or more vehicles per day with a hard surface of width and
86 strength adequate for such traffic volume, the Department of Transportation shall give consideration to
87 such resolution in establishing priority in expending the funds allocated to such county. The Department
88 shall consider the paving of roads with a right-of-way width of less than 40 feet under this subsection
89 when land is, has been, or can be acquired by gift for the purpose of constructing a hard-surface road.

90 B. Notwithstanding the provisions of subsection A of this section, any unpaved secondary road that
91 carries at least 50 but no more than 750 vehicles per day may be paved or improved and paved within
92 its existing right-of-way or within a wider right-of-way that is less than 40 feet wide if the following
93 conditions are met:

94 1. The governing body of the county in which the road is located has requested paving of such road
95 as part of the six-year plan for the county under § 33.1-70.01 and transmitted that request to the
96 Commonwealth Transportation Commissioner.

97 2. The Commonwealth Transportation Commissioner, after having considered only (i) the safety of
98 such road in its current condition and in its paved or improved condition, including the desirability of
99 reduced speed limits and installation of other warning signs or devices, (ii) the views of the residents
100 and owners of property adjacent to or served by such road, (iii) the views of the governing body making
101 the request, (iv) the historical and aesthetic significance of such road and its surroundings, (v) the
102 availability of any additional land that has been or may be acquired by gift or other means for the
103 purpose of paving such road within its existing right-of-way or within a wider right-of-way that is less
104 than 40 feet wide, and (vi) environmental considerations, shall grant or deny the request for the paving
105 of such road under this subsection.

106 C. Notwithstanding the provisions of subsections A and B, the governing body of any county, in
107 consultation with the Department, may designate a road or road segment as a Rural Rustic Road
108 provided such road or road segment is located in a low-density development area and has an average
109 daily traffic volume of no more than 1,500 vehicles per day. For a road or road segment so designated,
110 improvements shall utilize a paved surface width based on reduced and flexible standards that leave
111 trees, vegetation, side slopes and open drainage abutting the roadway undisturbed to the maximum
112 extent possible without compromising public safety. *Any road designated as Rural Rustic Road shall be*
113 *exempt from all state rules and regulations, except those deemed necessary for safety and those*
114 *necessary to provide an adequate hard surface.* The Department, in consultation with the affected local
115 governing body, shall first consider the paving of a road or road segment meeting the criteria for a
116 Rural Rustic Road in accordance with this subsection before making a decision to pave it to another
117 standard as set forth in this section. The provisions of this subsection shall become effective July 1,
118 2003.

119 D. The Commonwealth, its agencies, instrumentalities, departments, officers, and employees acting
120 within the scope of their duties and authority shall be immune for damages by reason of actions taken in

conformity with the provisions of this section. Immunity for the governing body of any political subdivision requesting paving under this section and the officers and employees of any such political subdivision shall be limited to that immunity provided pursuant to § 15.2-1405.

§ 33.1-70.2. Emergency paving of unpaved secondary roads; notice and public hearing required.

In the event of an emergency, no unpaved road within the secondary system of highways shall be paved unless the following procedures are satisfied:

1. The Commonwealth Transportation Commissioner shall provide notice of such intended paving to the governing body of the jurisdiction wherein the affected highway or portion thereof is located. The Commissioner shall provide such notice following his decision to pave the unpaved secondary road within the jurisdiction affected.

2. ~~The local governing body shall hold a public hearing concerning the proposed emergency paving, and all plans to pave the affected secondary highway shall be suspended until after the public hearing is held. Such hearing shall be conducted jointly by representatives of the local governing body and a representative of the Department of Transportation.~~ The local governing body's *concurrence or other* recommendation regarding the proposed paving shall ~~then~~ be forwarded to the Commissioner within ~~thirty days~~ *72 hours* following the receipt of the Commissioner's notice.

3. The Commissioner shall consider the following factors in determining whether the unpaved secondary road, as the result of an emergency, shall be paved: (i) the safety of the secondary highway in its current condition; (ii) the feasibility of restoring the unpaved highway to its functional level prior to the emergency; (iii) the concerns of the citizens in the jurisdiction wherein the affected highway is located, particularly those persons who own land adjacent to such highway; (iv) the concerns of the local governing body of the jurisdiction affected; and (v) the historical and aesthetic significance of the unpaved secondary highway and its surroundings.