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HOUSE BILL NO. 1758**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Transportation
on January 25, 2011)

(Patron Prior to Substitute—Delegate Wilt)

*A BILL to amend and reenact §§ 10.1-603.8, 33.1-23.3, 33.1-70.1, and 33.1-70.2 of the Code of Virginia, relating to local roads.***Be it enacted by the General Assembly of Virginia:****1. That §§ 10.1-603.8, 33.1-23.3, 33.1-70.1, and 33.1-70.2 of the Code of Virginia are amended and reenacted as follows:**

§ 10.1-603.8. Regulated activities; submission and approval of a permit application; security for performance; exemptions.

A. A person shall not develop any land for residential, commercial, industrial, or institutional use until he has submitted a permit application to the permit issuing authority and has obtained a permit. The permit issuing authority shall act on any permit application within 60 days after it has been determined by the permit issuing authority to be a complete application. The permit issuing authority may either issue the permit or deny the permit and shall provide written rationale for the denial. The permit issuing authority shall act on any permit application that has been previously disapproved within 45 days after the application has been revised, resubmitted for approval, and deemed complete. Prior to issuance of any permit, the permit issuing authority may also require an applicant, excluding those regulated under § 10.1-603.5, to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the permit issuing authority, to ensure that measures could be taken by the permit issuing authority at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him by the permit conditions as a result of his land disturbing activity. If the permit issuing authority takes such action upon such failure by the applicant, the permit issuing authority may collect from the applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the completion of the requirements of the permit conditions, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated. These requirements are in addition to all other provisions of law relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

B. Notwithstanding any other provisions of this article, the following activities are exempt:

1. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1;

2. Clearing of lands specifically for agricultural purposes and the management, tilling, planting or harvesting of agricultural, horticultural, or forest crops;

3. Single-family residences separately built and disturbing less than one acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures. However, localities subject to the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.) may regulate these single family residences where land disturbance exceeds 2,500 square feet;

4. Land disturbing activities that disturb less than one acre of land area except for land disturbing activity exceeding an area of 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20 et seq.) adopted pursuant to the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.) or activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance; however, the governing body of a locality which has adopted a stormwater management program may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;

5. Linear development projects, provided that (i) less than one acre of land will be disturbed per outfall or watershed, (ii) there will be insignificant increases in peak flow rates, and (iii) there are no existing or anticipated flooding or erosion problems downstream of the discharge point;

6. Discharges to a sanitary sewer or a combined sewer system;

7. Activities under a State or federal reclamation program to return an abandoned property to an agricultural or open land use; and

8. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project ~~and that disturbs less than five acres of land. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches~~

60 *and shoulders shall be deemed routine maintenance if performed in accordance with this subsection.*

61 C. Electric, natural gas, and communication utility companies, interstate and intrastate natural gas
62 pipeline companies, and railroad companies may not undertake any land clearing, soil movement, or
63 construction activity involving soil movement or land disturbance one acre or greater unless the
64 company has submitted a permit application for the land-disturbing activity and the application has been
65 reviewed and approved and a stormwater permit issued by the Board. Companies may submit a single
66 permit application containing stormwater management standards and specifications for all land disturbing
67 activities conducted under the requirements of this article.

68 § 33.1-23.3. Allocation of construction funds for urban system highways.

69 A. Such funds as are allocated to urban highways in (i) all towns that have more than 3,500
70 inhabitants according to the last preceding United States Census, (ii) all towns which, according to
71 evidence satisfactory to the Commonwealth Transportation Board, have attained a population of more
72 than 3,500 since the last preceding United States census, (iii) all incorporated towns which, on June 30,
73 1985, maintained certain streets under § 33.1-80 as then in effect, (iv) all cities regardless of their
74 populations, and (v) the Towns of Wise, Lebanon, and Altavista pursuant to subdivision B 2 of
75 subsection B of § 33.1-23.1 shall be apportioned among the cities and towns of this Commonwealth by
76 the Commonwealth Transportation Board in such a manner that each city or town to which these funds
77 are allocable receives the same proportion of total funds available as the population of that city or town
78 bears to the total population of all cities and towns among which such funds are allocable. For the
79 purposes of this section, the term "population" means either the population according to the latest United
80 States census or the latest population estimate of the Center for Public Service, whichever is more
81 recent. Whenever any city or town qualifies under this section for allocation of funds, such qualification
82 shall continue to apply to such city or town notwithstanding any subsequent changes in population and
83 shall cease to apply only upon the subsequent enactment by the General Assembly of a measure in
84 which the intent is clearly stated. All allocations made prior to July 1, 2001, to cities and towns meeting
85 the criteria above are hereby ratified, validated, and confirmed.

86 B. No apportionment hereunder shall be made to any city or town which does not have an urban
87 project or projects approved by the Commonwealth Transportation Board and in no case shall the
88 apportionment to any city or town exceed the total estimated cost of the project or projects for which
89 funds are allocated. Such funds shall, as far as possible, be allotted prior to the commencement of the
90 fiscal year and public announcement made of such allotment. Any apportionment due but not received
91 by any city or town in a fiscal year for use under this section shall accrue as a credit to such city or
92 town and be held for its construction projects for five succeeding fiscal years. Funds accrued shall be
93 apportioned prior to any other distribution under this section in the fiscal year requested by the city or
94 town.

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

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

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

120 The provisions of this section shall not constitute a debt or obligation of the Commonwealth
121 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 *December 31* for implementation the following *fiscal* year.

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

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

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

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

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

C. Notwithstanding the provisions of subsections A and B, the governing body of any county, in consultation with the Department, may designate a road or road segment as a Rural Rustic Road provided such road or road segment is located in a low-density development area and has an average daily traffic volume of no more than 1,500 vehicles per day. For a road or road segment so designated, improvements shall utilize a paved surface width based on reduced and flexible standards that leave trees, vegetation, side slopes and open drainage abutting the roadway undisturbed to the maximum extent possible without compromising public safety. *Any road designated as a Rural Rustic Road shall be subject to § 10.1-603.8.* The Department, in consultation with the affected local governing body, shall first consider the paving of a road or road segment meeting the criteria for a Rural Rustic Road in accordance with this subsection before making a decision to pave it to another standard as set forth in this section. The provisions of this subsection shall become effective July 1, 2003.

D. The Commonwealth, its agencies, instrumentalities, departments, officers, and employees acting 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

183 within the jurisdiction affected.

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

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