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SENATE BILL NO. 1135

Offered January 12, 2011

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A *BILL to amend and reenact §§ 33.1-12 33.1-23, and 33.1-23.03 of the Code of Virginia and to repeal § 33.1-21 of the Code of Virginia, relating to general powers and duties of the Commonwealth Transportation Board.*

Patron—Wagner

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-12, 33.1-23, and 33.1-23.03 of the Code of Virginia are amended and reenacted as follows:

§ 33.1-12. General powers and duties of Board, etc.; definitions.

The Commonwealth Transportation Board shall be vested with the following powers and shall have the following duties:

(1) Location of routes. To locate and establish the routes to be followed by the roads comprising systems of state highways between the points designated in the establishment of such systems, *except that such routes shall not include roads located within any local system of roads, within the urban system of highways, or those local roads in any county that has resumed full responsibility for all of the secondary system of highways within such county's boundaries pursuant to § 33.1-84.1.* Such routes shall include corridors of statewide significance pursuant to § 33.1-23.03.

(2) Construction and maintenance contracts and activities related to passenger and freight rail and public transportation.

(a) To let all contracts to be administered by the Virginia Department of Transportation or the Department of Rail and Public Transportation for the construction, maintenance, and improvement of the roads comprising systems of state highways and for all activities related to passenger and freight rail and public transportation in excess of \$2 \$5 million. The Commonwealth Transportation Commissioner shall have authority to let all Virginia Department of Transportation-administered contracts for highway construction, maintenance, and improvements up to \$2 \$5 million in value. The Director of the Department of Rail and Public Transportation shall have the authority to let contracts for passenger and freight rail and public transportation improvements up to \$2 \$5 million in value. The Commonwealth Transportation Commissioner is authorized to enter into agreements with localities, authorities, and transportation districts to administer projects and to allow those localities, authorities, and transportation districts to let contracts *with no limit on contract value, and without prior concurrence of the Commonwealth Transportation Commissioner or the Board* for highway construction, maintenance, and improvements within their jurisdictions, *in accordance with those provisions of the Code of Virginia providing those localities, authorities, and transportation districts the ability to let such contracts.* The Director of the Department of Rail and Public Transportation is authorized to enter into agreements with localities, authorities, and transportation districts to administer projects and to allow those localities, authorities, and transportation districts to let contracts *with no limit on contract value, and without prior concurrence of the Director of the Department of Rail and Public Transportation or the Board* for passenger and freight rail and public transportation activities within their jurisdictions, *in accordance with those provisions of the Code of Virginia providing those localities, authorities, and transportation districts the ability to let such contracts.* The Commonwealth Transportation Commissioner and the Director of the Department of Rail and Public Transportation shall report on their respective transportation contracting activities at least quarterly to the Board.

(b) The Commonwealth Transportation Board may award contracts for the construction of transportation projects on a design-build basis. These contracts may be awarded after a written determination is made by the Commonwealth Transportation Commissioner or the Director of the Department of Rail and Public Transportation, pursuant to objective criteria previously adopted by the Board regarding the use of design-build, that delivery of the projects must be expedited and that it is not in the public interest to comply with the design and construction contracting procedures normally followed. Such objective criteria will include requirements for prequalification of contractors and competitive bidding processes. These contracts shall be of such size and scope to encourage maximum competition and participation by agency prequalified and otherwise qualified contractors. Such determination shall be retained for public inspection in the official records of the Department of Transportation or the Department of Rail and Public Transportation, as the case may be, and shall

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59 include a description of the nature and scope of the project and the reasons for the Commissioner's or
60 Director's determination that awarding a design-build contract will best serve the public interest. The
61 provisions of this section shall supersede contrary provisions of subsection D of § 2.2-4303 and
62 § 2.2-4306.

63 (c) For transportation construction projects valued in excess of \$100 million, the Commonwealth
64 Transportation Board shall require that a financial plan be prepared. This plan shall include, but not be
65 limited to, the following: (i) a complete cost estimate for all major project elements; (ii) an
66 implementation plan with the project schedule and cost-to-complete information presented for each year;
67 (iii) identified revenues by funding source available each year to meet project costs; (iv) a detailed
68 cash-flow analysis for each year of the proposed project; and (v) efforts to be made to ensure maximum
69 involvement of private enterprise and private capital.

70 (d) The Commonwealth Transportation Board may award contracts for the provision of equipment,
71 materials, and supplies to be used in construction of transportation projects on a fixed-price basis. Any
72 such contract may provide that the price to be paid for the provision of equipment, materials, and
73 supplies to be furnished in connection with the projects shall not be increased but shall remain fixed
74 until completion of the projects specified in the contracts. Material components of any such contract for
75 annual and multi-year programs, including but not limited to maintenance, may be fixed at the outset of
76 the projects and until completion based on best achievable prices.

77 (3) Traffic regulations. To make rules and regulations, from time to time, not in conflict with the
78 laws of the Commonwealth, for the protection of and covering traffic on and the use of systems of state
79 highways and to add to, amend or repeal the same.

80 (4) Naming highways, bridges, and interchanges. To give suitable names to state highways, bridges,
81 and interchanges and change the names of any highways, bridges, or interchanges forming a part of the
82 systems of state highways, except such highways, bridges, or interchanges as have been or may hereafter
83 be named by the General Assembly; provided that the name of living persons shall not be used for such
84 purposes. The Department of Transportation shall place and maintain appropriate signs indicating the
85 names of highways, bridges, and interchanges named by the Board or by the General Assembly. The
86 costs of producing, placing, and maintaining these signs shall be paid by the counties, cities, and towns
87 in which they are located. No name shall be given to any state highway, bridge or interchange by the
88 Commonwealth Transportation Board unless and until the Commonwealth Transportation Board shall
89 have received from the local governing body of the locality within which a portion of the facility to be
90 named is located a resolution of that governing body requesting such naming.

91 (5) Compliance with federal acts. To comply fully with the provisions of the present or future federal
92 aid acts. The Board may enter into all contracts or agreements with the United States government and
93 may do all other things necessary to carry out fully the cooperation contemplated and provided for by
94 present or future acts of Congress in the area of transportation.

95 (6) Information and statistics. To gather and tabulate information and statistics relating to
96 transportation and disseminate the same throughout the Commonwealth. In addition, the Commissioner
97 shall provide a report to the Governor, the General Assembly, the Commonwealth Transportation Board,
98 and the public concerning the current status of all highway construction projects in the Commonwealth.
99 This report shall be posted at least four times each fiscal year, but may be updated more often as
100 circumstances allow. The report shall contain, at a minimum, the following information for every project
101 in the Six-Year Improvement Program: (i) project description; (ii) total cost estimate; (iii) funds
102 expended to date; (iv) project timeline and completion date; (v) statement of whether project is ahead of,
103 on, or behind schedule; (vi) the name of the prime contractor; (vii) total expenditures of federal
104 transportation funds in each county and city; (viii) total expenditures of state transportation funds in
105 each county and city; (ix) statewide totals for federal, state, and local funds expended for highways; (x)
106 statewide totals for federal, state, and local funds expended for transit; (xi) total funds expended on
107 intercity passenger and freight rail line and trains; and (xii) total funds expended in each federal and
108 state programmatic category. Use of one or more Internet websites may be used to satisfy this
109 requirement. Project specific information posted on the Internet shall be updated daily as information is
110 available.

111 (7) Policies and operation of Departments. To review and approve policies and transportation
112 objectives of the Department of Transportation and the Department of Rail and Public Transportation, to
113 assist in establishing such policies and objectives, to oversee the execution thereof, and to report thereon
114 to the Commonwealth Transportation Commissioner and the Director of the Department of Rail and
115 Public Transportation, respectively.

116 (8) Cooperation with other agencies and local governments.

117 (a) To cooperate with the federal government, the American Association of State Highway and
118 Transportation Officials and any other organization in the numbering, signing and marking of highways,
119 in the taking of measures for the promotion of highway safety, in research activities, in the preparation
120 of standard specifications, in the testing of highway materials and otherwise with respect to

121 transportation projects.

122 (b) To offer technical assistance and coordinate state resources to work with local governments, upon
123 their request, in developing sound transportation components for their local comprehensive plans.

124 (9) Transportation.

125 (a) To monitor and, where necessary, approve actions taken by the Department of Rail and Public
126 Transportation pursuant to Chapter 10.1 (§ 33.1-391.1 et seq.) of this title in order to ensure the efficient
127 and economical development of public transportation, the enhancement of rail transportation, and the
128 coordination of such rail and public transportation plans with highway programs.

129 (b) To coordinate the planning for financing of transportation needs, including needs for highways,
130 railways, seaports, airports, and public transportation and to set aside funds as provided in
131 § 33.1-23.03:1. To allocate funds for these needs pursuant to §§ 33.1-23.1 and 58.1-638, the Board shall
132 adopt a Six-Year Improvement Program of anticipated projects and programs by July 1 of each year.
133 This program shall be based on the most recent official Transportation Trust Fund revenue forecast and
134 shall be consistent with a debt management policy adopted by the Board in consultation with the Debt
135 Capacity Advisory Committee and the Department of the Treasury.

136 (c) To recommend to the General Assembly for their consideration at the next session of the General
137 Assembly, objective criteria to be used by the Board in selecting those transportation projects to be
138 advanced from the feasibility to the construction stage. If such criteria are enacted into law, such
139 objectives shall apply to the interstate, primary, and urban systems of highways.

140 (d) To enter into contracts with local districts, commissions, agencies, or other entities created for
141 transportation purposes.

142 (e) To promote increasing private investment in Virginia's transportation infrastructure, including but
143 not limited to acquisition of causeways, bridges, tunnels, highways, and other transportation facilities.

144 (10) Contracts with other states. To enter into all contracts with other states necessary for the proper
145 coordination of the location, construction, maintenance, improvement, and operation of transportation
146 systems, including the systems of state highways with the highways of such other states and, where
147 necessary, to seek the approval of such contracts by the Congress of the United States.

148 (11) Use of funds. To administer, distribute, and allocate funds in the Transportation Trust Fund as
149 provided by law. The Commonwealth Transportation Board shall ensure that the total funds allocated to
150 any highway construction project are equal to total expenditures within 12 months following completion
151 of the project. However, this requirement shall not apply to debt service apportionments pursuant to
152 § 33.1-23.3 or 33.1-23.4.

153 (12) Financial and investment advisors. With the advice of the Secretary of Finance and the State
154 Treasurer, to engage a financial advisor and investment advisor who may be anyone within or without
155 the government of the Commonwealth, to assist in planning and making decisions concerning the
156 investment of funds and the use of bonds for transportation purposes. The work of these advisors shall
157 be coordinated with the Secretary of Finance and the State Treasurer.

158 (13) The powers of the Virginia Aviation Board set out in Chapter 1 (§ 5.1-1 et seq.) of Title 5.1
159 and the Virginia Port Authority set out in Chapter 10 (§ 62.1-128 et seq.) of Title 62.1 are in no way
160 diminished by the provisions of this title.

161 (14) To enter into payment agreements with the Treasury Board related to payments on bonds issued
162 by the Commonwealth Transportation Board.

163 (15) ~~Outdoor theaters. By regulation:~~

164 ~~(a) To prevent the erection of moving picture screens of outdoor theaters in such a manner as to be
165 ordinarily visible from any highway;~~

166 ~~(b) To require that a sufficient space is left between any highway and the entrance to any outdoor
167 theater to prevent congestion on the highway; and~~

168 ~~(c) To require that outdoor theater entrances and exits are adequately lighted and marked.~~

169 ~~(16) Establishment of highway user fees for the systems of state highways. When the traffic-carrying
170 capacity of any system of state highways or a portion thereof is increased by construction or
171 improvement, the Commonwealth Transportation Board may enter into agreements with localities,
172 authorities, and transportation districts to establish highway user fees for such system of state highways
173 or portion thereof that the localities, authorities, and transportation districts maintain.~~

174 ~~(17) (16) Subject to compliance with applicable federal regulations, the Commonwealth
175 Transportation Board shall establish a plan for identification and acquisition of rights-of-way that may
176 be needed within the corridors designated on the Statewide Transportation Plan.~~

177 The term "public transportation" or "mass transit" as used in this title means passenger transportation
178 by rubber-tired, rail, or other surface conveyance which provides shared ride services open to the general
179 public on a regular and continuing basis. The term does not include school buses; charter or sight-seeing
180 service; vehicular ferry service that serves as a link in the highway network; or human service agency or
181 other client-restricted transportation.

182 § 33.1-23. Sections not applicable to certain engines and tractors.

183 The provisions of subdivision (3) of § 33.1-12 and of ~~the preceding three sections~~ (§§ 33.1-19,
184 ~~33.1-21, and 33.1-22~~) shall not apply to traction engines and tractors, weighing not less than five tons,
185 when drawing threshing machines, hay balers or other farm machinery for local farm use.

186 § 33.1-23.03. Board to develop and update Statewide Transportation Plan.

187 A. The Commonwealth Transportation Board shall, with the assistance of the Office of Intermodal
188 Planning and Investment, conduct a comprehensive review of statewide transportation needs in a
189 Statewide Transportation Plan setting forth assessment of capacity needs for all corridors of statewide
190 significance, regional networks, and improvements to promote urban development areas established
191 pursuant to § 15.2-2223.1. The assessment shall consider all modes of transportation. Such corridors
192 shall be planned to include multimodal transportation improvements, and the plan shall consider corridor
193 location in planning for any major transportation infrastructure, including environmental impacts and the
194 comprehensive land use plan of the locality in which the corridor is planned. In the designation of such
195 corridors, the Commonwealth Transportation Board shall not be constrained by local, district, regional,
196 or modal plans.

197 This Statewide Transportation Plan shall be updated as needed, but no less than once every ~~five~~ *four*
198 years. The plan shall promote economic development and all transportation modes, intermodal
199 connectivity, environmental quality, accessibility for people and freight, and transportation safety.

200 B. The Statewide Transportation Plan shall establish goals, objectives, and priorities that cover at
201 least a 20-year planning horizon, in accordance with federal transportation planning requirements. The
202 plan shall include quantifiable measures and achievable goals relating to, but not limited to, congestion
203 reduction and safety, transit and high-occupancy vehicle facility use, job-to-housing ratios, job and
204 housing access to transit and pedestrian facilities, air quality, movement of freight by rail, and per capita
205 vehicle miles traveled. The Board shall consider such goals in evaluating and selecting transportation
206 improvement projects for inclusion in the Six-Year Improvement Program pursuant to § 33.1-12.

207 C. The plan shall incorporate the approved long-range plans' measures and goals developed by the
208 applicable regional organizations. Each such plan shall be summarized in a public document and made
209 available to the general public upon presentation to the Governor and General Assembly.

210 D. It is the intent of the General Assembly that this plan assess transportation needs and assign
211 priorities to projects on a statewide basis, avoiding the production of a plan which is an aggregation of
212 local, district, regional, or modal plans.

213 **2. That, notwithstanding the amendments to subsection A of § 33.1-23.03 contained in this act, the**
214 **Statewide Transportation Plan shall next be updated and presented to the Governor and the**
215 **General Assembly no later than December 1, 2013, and the subsequent Statewide Transportation**
216 **Plan update shall be presented to the Governor and the General Assembly no later than December**
217 **1, 2015.**

218 **3. That § 33.1-21 of the Code of Virginia is repealed.**