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**HOUSE BILL NO. 477**

Offered January 11, 2012

Prefiled January 10, 2012

*A BILL to amend and reenact §§ 33.1-23.1, 33.1-23.5:1, and 33.1-41.1 of the Code of Virginia, relating to allocation of funds for maintenance of Interstate Highway System components.*

Patrons—Albo, Bulova, Filler-Corn, Hugo, Keam, LeMunyon and Ramadan

Referred to Committee on Appropriations

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

**1. That §§ 33.1-23.1, 33.1-23.5:1, and 33.1-41.1 of the Code of Virginia are amended and reenacted as follows:**

§ 33.1-23.1. Allocation of funds among highway systems.

A. The Commonwealth Transportation Board shall allocate each year from all funds made available for highway purposes such amount as it deems reasonable and necessary for the maintenance of roads within the interstate system of highways, the primary system of state highways, the secondary system of state highways and for city and town street maintenance payments made pursuant to § 33.1-41.1 and payments made to counties ~~which~~ *that* have withdrawn or elect to withdraw from the secondary system of state highways pursuant to § 33.1-23.5:1. *When allocating funds for the interstate system of highways, the primary system of state highways, the secondary system of state highways maintained by the Commonwealth, the city and town street maintenance payments, and the payments made to counties that have withdrawn or elect to withdraw from the secondary system of state highways, the Board shall consider achieving a minimal level of disparity among highway construction districts, city and town streets, and those counties that have withdrawn or elect to withdraw from the secondary system of highways in meeting asset management methodology established pursuant to § 33.1-13.03. Prior to the allocation of funds pursuant to this subsection, the Board shall release for public review a comparison of the proposed allocation of funds by highway construction district, city and town streets, and those counties that have withdrawn or elect to withdraw from the secondary system of highways with the allocation of such funds based entirely on asset management methodology established pursuant to § 33.1-13.03.*

B. After funds are set aside for administrative and general expenses and pursuant to other provisions in this title which provide for the disposition of funds prior to allocation for highway purposes, and after allocation is made pursuant to subsection A ~~of this section~~, the Commonwealth Transportation Board may allocate each year up to ~~10%~~ *10 percent* of the funds remaining for highway purposes for the undertaking and financing of rail projects that, in the Board's determination, will result in mitigation of highway congestion. After the forgoing allocations have been made, the Board shall allocate the remaining funds available for highway purposes, exclusive of federal funds for the interstate system, among the several highway systems for construction first pursuant to §§ 33.1-23.1:1 and 33.1-23.1:2 and then as follows:

1. Forty percent of the remaining funds exclusive of federal-aid matching funds for the interstate system shall be allocated to the primary system of state highways, including the arterial network, and in addition, an amount shall be allocated to the primary system as interstate matching funds as provided in subsection B of § 33.1-23.2.

2. Thirty percent of the remaining funds exclusive of federal-aid matching funds for the interstate system shall be allocated to urban highways for state aid pursuant to § 33.1-44.

3. Thirty percent of the remaining funds exclusive of federal-aid matching funds for the interstate system shall be allocated to the secondary system of state highways.

C. In addition, the Commonwealth Transportation Board, from funds appropriated for such purpose in the general appropriation act, shall allocate additional funds to the Cities of Newport News, Norfolk, and Portsmouth and the County of Warren in such manner and apportion such funds among such localities as the Board may determine, unless otherwise provided in the general appropriation act. The localities shall use such funds to address highway maintenance and repair needs created by or associated with port operations in those localities.

D. Notwithstanding the foregoing provisions of this section, the General Assembly may, through the general appropriations act, permit the Governor to increase the amounts to be allocated to highway maintenance, highway construction, either or both.

§ 33.1-23.5:1. Funds for counties which have withdrawn or elect to withdraw from the secondary system of state highways.

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HB477

59 Notwithstanding the provisions of ~~§ 33.1-23.5~~, pursuant to subsection A of ~~§ 33.1-23.1~~, the  
60 Commonwealth Transportation Board shall make the following payments to counties which have  
61 withdrawn or elect to withdraw from the secondary system of state highways under the provisions of  
62 ~~§ 11 of Chapter 415 of the Acts of Assembly of 1932~~, and which have not elected to return: to any  
63 county having withdrawn prior to June 30, 1985, and having an area greater than 100 square miles, an  
64 amount equal to \$3,616 per lane-mile for fiscal year 1986, and to any county having an area less than  
65 100 square miles, an amount equal to \$7,201 per lane-mile for fiscal year 1986; to any county that  
66 elects to withdraw after June 30, 1985, the Commonwealth Transportation Board shall establish a rate  
67 per lane-mile for the first year using (i) an amount for maintenance based on maintenance standards and  
68 unit costs used by the Department of Transportation to prepare its secondary system maintenance budget  
69 for the year in which the county withdraws, and (ii) an amount for administration equal to five percent  
70 of the maintenance figure determined in (i) above. The payment rates shall be adjusted annually by the  
71 Board in accordance with procedures established for adjusting payments to cities and towns under  
72 ~~§ 33.1-41.1~~, and lane mileage shall be adjusted annually to include (i) streets and highways accepted for  
73 maintenance in the county system by the local governing body, or (ii) streets and highways constructed  
74 according to standards set forth in the county subdivision ordinance or county thoroughfare plan, and  
75 being not less than the standards set by the Department of Transportation. Such counties shall, in  
76 addition, *Counties that have withdrawn or elect to withdraw from the secondary system of state*  
77 *highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932, and which have*  
78 *not elected to return shall* each receive for construction from funds allocated pursuant to subdivision B  
79 3 of ~~§ 33.1-23.1~~ an annual amount calculated in the same manner as payments for construction in the  
80 state secondary highway system are calculated.

81 Payment of the funds shall be made in four equal sums, one in each quarter of the fiscal year, and  
82 shall be reduced, in the case of each such county, by the amount of federal-aid construction funds  
83 credited to each such county.

84 The chief administrative officer of such counties receiving such funds shall make annual reports of  
85 expenditures to the Board, in such form as the Board shall prescribe, accounting for all expenditures,  
86 including delineation between construction and maintenance expenditures and reporting on their  
87 performance as specified in subdivision B 3 of ~~§ 33.1-23.02~~. Such reports shall be included in the scope  
88 of the annual audit of each county conducted by independent certified public accountants.

89 ~~§ 33.1-41.1~~. Payments to cities and certain towns for maintenance of certain highways.

90 The Commissioner of Highways, subject to the approval of the Commonwealth Transportation Board,  
91 shall make payments for maintenance, construction, or reconstruction of highways, as hereinafter  
92 provided, to all cities and towns eligible for allocation of construction funds for urban highways under  
93 ~~§ 33.1-23.3~~. Such payments, however, shall only be made if those highways functionally classified as  
94 principal and minor arterial roads are maintained to a standard satisfactory to the Department of  
95 Transportation. Whenever any city or town qualifies under this section for allocation of funds, such  
96 qualification shall continue to apply to such city or town regardless of any subsequent change in  
97 population and shall cease to apply only when so specifically provided by an act of the General  
98 Assembly. All allocations made prior to July 1, 2001, to cities and towns meeting the criteria of the  
99 foregoing provisions of this section are hereby confirmed.

100 No payments shall be made to any such city or town unless the portion of the highway for which  
101 such payment is made either (a) has (i) an unrestricted right-of-way at least 50 feet wide and (ii) a  
102 hard-surface width of at least 30 feet; or (b) has (i) an unrestricted right-of-way at least 80 feet wide,  
103 (ii) a hard-surface width of at least 24 feet, and (iii) approved engineering plans for the ultimate  
104 construction of an additional hard-surface width of at least 24 feet within the same right-of-way; or (c)  
105 (i) is a cul-de-sac, (ii) has an unrestricted right-of-way at least 40 feet wide, and (iii) has a turnaround  
106 that meets applicable standards set by the Department of Transportation; or (d) either (i) has been paved  
107 and has constituted part of the primary or secondary system of state highways prior to annexation or  
108 incorporation or (ii) has constituted part of the secondary system of state highways prior to annexation  
109 or incorporation and is paved to a minimum width of 16 feet subsequent to such annexation or  
110 incorporation and with the further exception of streets or portions thereof which have previously been  
111 maintained under the provisions of ~~§ 33.1-79~~ or ~~§ 33.1-82~~; or (e) was eligible for and receiving such  
112 payments under the laws of the Commonwealth in effect on June 30, 1985; or (f) is a street established  
113 prior to July 1, 1950, which has an unrestricted right-of-way width of not less than 30 feet and a  
114 hard-surface width of not less than 16 feet; or (g) is a street functionally classified as a local street and  
115 constructed on or after January 1, 1996, which at the time of approval by the city or town met the  
116 criteria for pavement width and right-of-way of the then-current edition of the subdivision street  
117 requirements manual for secondary roads of the Department of Transportation (24 VAC 30-90-10 et  
118 seq.); (h) is a street previously eligible to receive street payments that is located in the City of Norfolk  
119 and the City of Richmond and is closed to public travel, pursuant to legislation enacted by the  
120 governing body of the city in which it is located, for public safety reasons, within the boundaries of a

publicly funded housing development owned and operated by the local housing authority; or (i) is a local street, otherwise eligible, containing one or more physical protuberances placed within the right-of-way for the purpose of controlling the speed of traffic.

However, the Commissioner may waive the requirements as to hard-surface pavement or right-of-way width for highways where the width modification is at the request of the local governing body and is to protect the quality of the affected local government's drinking water supply or, for highways constructed on or after July 1, 1994, to accommodate some other special circumstance where such action would not compromise the health, safety, or welfare of the public. The modification is subject to such conditions as the Commissioner may prescribe.

For the purpose of calculating allocations and making payments under this section, the Department shall divide affected highways into two categories, which shall be distinct from but based on functional classifications established by the Federal Highway Administration: (i) principal and minor arterial roads and (ii) collector roads and local streets. Payments made to affected localities shall be based on the number of moving-lane-miles of highways or portions thereof available to peak-hour traffic in that locality.

The Department of Transportation shall recommend to the Commonwealth Transportation Board an annual rate per category to be computed using the base rate of growth planned for the Department's Highway Maintenance and Operations program. The Board shall establish the annual rates of such payments as part of its allocation for such purpose, and the Department of Transportation shall use those rates to calculate and put into effect annual changes in each qualifying city's or town's payment under this section.

The payments by the Department shall be paid in equal sums in each quarter of the fiscal year, and payments shall not exceed the allocation of the Board.

The chief administrative officer of the city or town receiving this fund shall make annual categorical reports of expenditures to the Department, in such form as the Board shall prescribe, accounting for all expenditures, certifying that none of the money received has been expended for other than maintenance, construction or reconstruction of the streets, and reporting on their performance as specified in subdivision B 3 of § 33.1-23.02. Such reports shall be included in the scope of the annual audit of each municipality conducted by independent certified public accountants.