

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 33.1-12 of the Code of Virginia, relating to reimbursement of the Department of Transportation for termination or alteration of certain transportation projects.

[H 1718]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 33.1-12 of the Code of Virginia is 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 \$5 million. The Commissioner of Highways shall have authority to let all Virginia Department of Transportation-administered contracts for highway construction, maintenance, and improvements up to \$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 \$5 million in value. The Commissioner of Highways 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 Commissioner of Highways 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 Commissioner of Highways 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 Commissioner of Highways 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 include a description of the nature and scope of the project and the reasons for the Commissioner's or Director's determination that awarding a design-build contract will best serve the public interest. The provisions of this section shall supersede contrary provisions of subsection D of § 2.2-4303 and § 2.2-4306.

(c) For transportation construction projects valued in excess of \$100 million, the Commonwealth Transportation Board shall require that a financial plan be prepared. This plan shall include, but not be

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57 limited to, the following: (i) a complete cost estimate for all major project elements; (ii) an
 58 implementation plan with the project schedule and cost-to-complete information presented for each year;
 59 (iii) identified revenues by funding source available each year to meet project costs; (iv) a detailed
 60 cash-flow analysis for each year of the proposed project; and (v) efforts to be made to ensure maximum
 61 involvement of private enterprise and private capital.

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

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

72 (4) Naming highways, bridges, interchanges, and other transportation facilities. To give suitable
 73 names to state highways, bridges, interchanges, and other transportation facilities, and change the names
 74 of any highways, bridges, interchanges, or other transportation facilities forming a part of the systems of
 75 state highways. The name of private entities, as defined in § 56-557, located within the Commonwealth
 76 shall not be used for such purposes unless such private entity pays to the Department of Transportation
 77 an annual naming rights fee as determined by the Board. The Department of Transportation shall place
 78 and maintain appropriate signs indicating the names of highways, bridges, interchanges, and other
 79 transportation facilities named by the Board or by the General Assembly. The costs of producing,
 80 placing, and maintaining these signs shall be paid by the counties, cities, and towns in which they are
 81 located or by the private entity whose name is attached to the highway, bridge, interchange, or other
 82 transportation facility. No name shall be given to any state highway, bridge, interchange, or other
 83 transportation facility by the Commonwealth Transportation Board unless and until the Commonwealth
 84 Transportation Board shall have received from the local governing body of the locality within which a
 85 portion of the facility to be named is located a resolution of that governing body requesting such
 86 naming, except in such cases where a private entity has requested such naming. No highway, bridge,
 87 interchange, or other transportation facility previously named by the Board or the General Assembly
 88 shall be eligible for renaming by a private entity, unless such naming incorporates the previous name.
 89 The Board shall develop and approve guidelines governing the naming of highways, bridges,
 90 interchanges, and other transportation facilities by private entities and the applicable fees for such
 91 naming rights. Such fees shall be deposited in the Highway Maintenance and Operating Fund.

92 No name shall be eligible for the naming rights under this subdivision if it in any way reasonably
 93 connotes anything that (i) is profane, obscene, or vulgar; (ii) is sexually explicit or graphic; (iii) is
 94 excretory related; (iv) is descriptive of intimate body parts or genitals; (v) is descriptive of illegal
 95 activities or substances; (vi) condones or encourages violence; or (vii) is socially, racially, or ethnically
 96 offensive or disparaging.

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

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

117 (7) Policies and operation of Departments. To review and approve policies and transportation

objectives of the Department of Transportation and the Department of Rail and Public Transportation, to assist in establishing such policies and objectives, to oversee the execution thereof, and to report thereon to the Commissioner of Highways and the Director of the Department of Rail and Public Transportation, respectively.

(8) Cooperation with other agencies and local governments.

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

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

(9) Transportation.

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

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

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

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

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

(f) To integrate land use with transportation planning and programming, consistent with the efficient and economical use of public funds. If the Board determines that a local transportation plan described in § 15.2-2223 or any amendment as described in § 15.2-2229 or a metropolitan regional long-range transportation plan or regional Transportation Improvement Program as described in § 33.1-223.2:25 is not consistent with the Commonwealth Transportation Board's Statewide Transportation Plan developed pursuant to § 33.1-23.03, the Six-Year Improvement Program adopted pursuant to subdivision (9)(b), and the location of routes to be followed by roads comprising systems of state highways pursuant to subdivision (1), the Board shall notify the locality of such inconsistency and request that the applicable plan or program be amended accordingly. If, after a reasonable time, the Board determines that there is a refusal to amend the plan or program, then the Board may reallocate funds that were allocated to the nonconforming project as permitted by state or federal law. If a locality or metropolitan planning organization requests the termination of a project *and that termination is not mutually agreed upon with the Department of Transportation* or if a locality or metropolitan planning organization does not advance a project to the next phase of construction when requested by the Board and the Department of Transportation has expended state or federal funds, the locality or the localities within the metropolitan planning organization may be required to reimburse the Department of Transportation for all funds expended on the project. If, *after design approval by the Chief Engineer of the Virginia Department of Transportation*, a locality or metropolitan planning organization requests alterations to a project that, in the aggregate, exceeds 10 percent of the total project costs, the locality or the localities within the metropolitan planning organization may be required to reimburse the Department of Transportation for the additional project costs above the original estimates for making such alterations.

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

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

179 § 33.1-23.3 or 33.1-23.4.

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

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

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

190 (15) Establishment of highway user fees for the systems of state highways. When the traffic-carrying
191 capacity of any system of state highways or a portion thereof is increased by construction or
192 improvement, the Commonwealth Transportation Board may enter into agreements with localities,
193 authorities, and transportation districts to establish highway user fees for such system of state highways
194 or portion thereof that the localities, authorities, and transportation districts maintain.

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

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